

# **HEALTH AND WELFARE COMMITTEE**

## **ADMINISTRATIVE RULES REVIEW**

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#### **2008 Legislative Session**

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## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.02 - RULES AND MINIMUM STANDARDS FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITIES**

##### **DOCKET NO. 16-0302-0701 (FEE RULE)**

##### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Sections 39-1306, 39-1307, 39-1307A, 39-1307B, 56-1004A, and 56-1005(8), Idaho Code, in response to the conclusion of the pilot project for criminal history and background checks in long-term care settings.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**Skilled nursing and intermediate care facilities participated in a pilot project for criminal history and background checks for workers who have access, or provide care to residents in long-term care facilities. The pilot project and federal funding for these checks expired on September 30, 2007.**

**In order to protect vulnerable adults living in skilled nursing and intermediate care facilities, the Department has decided to continue these criminal history and background checks. This rule change allows a facility to use either the Department's criminal history and background check or another entity's check. The pending rule is being adopted as proposed. The complete text of the proposed rule published in the September 5, 2007, Idaho Administrative Bulletin, Vol. 07-9, pages 145 through 149.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 56-1004A(5), Idaho Code, which requires an applicant for a criminal history and background check to be responsible for the cost of the check.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. This rulemaking has no fiscal impact to the state general fund. A criminal history and background check is paid for by the applicant.

**ASSISTANCE ON TECHNICAL QUESTIONS AND OBTAINING COPIES:** For assistance

## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE  
Skilled Nursing and Intermediate Care Facilities**

**Docket No. 16-0302-0701  
PENDING FEE RULE**

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on technical questions concerning the pending rule, contact Randy May at (208) 334-5747.

DATED this 5th day of October, 2007.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@dhw.idaho.gov e-mail

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. This action is authorized pursuant to Sections 39-1306, 39-1307, 39-1307A, 39-1307B, 56-1004A, and 56-1005(8), Idaho Code, in response to the conclusion of the pilot project for criminal history and background checks in long-term care settings.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Tuesday, September 11, 2007 at 6:00 p.m.  
Department of Health and Welfare  
1720 Westgate Drive  
Suite D, Room 119, Boise, Idaho**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Currently, skilled nursing and intermediate care facilities participate in a pilot project for criminal history and background checks for workers who have access, or provide care to residents in long-term care facilities. The pilot project and federal funding for these checks expire on September 30, 2007.**

**In order to protect vulnerable adults living in skilled nursing and intermediate care**

## HEALTH AND WELFARE COMMITTEE

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Skilled Nursing and Intermediate Care Facilities**

**Docket No. 16-0302-0701**  
**PENDING FEE RULE**

facilities, the Department has decided to continue these criminal history and background checks. This rule change allows a facility to use either the Department's criminal history and background check or another entity's check. Checks conducted by other entities at a minimum, must

1. Be fingerprint-based; and
2. Include a search of specified sources for criminal history and background records.

This rule change states when an individual is available to work and provides other requirements necessary to complete a criminal history and background check.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)a, and 67-5226(1)b, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Under Section 56-1004A(9), Idaho Code, the federal pilot project to conduct criminal history and background checks in long-term care settings expires September 30, 2007. These rules are being promulgated to continue requiring these checks to protect vulnerable adults and children in long-term care facilities.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

**Applicants are responsible for the cost of the criminal history and background check under Section 56-1004A(5), Idaho Code.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

This rulemaking has no fiscal impact to the state general fund. The criminal history and background checks are paid for by applicants to cover Department costs for the checks.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 6, 2007, Vol. 07-6, page 65.

**ASSISTANCE ON TECHNICAL QUESTIONS AND OBTAINING COPIES:** For assistance on technical questions concerning the temporary and proposed rule, contact Randy May at (208) 334-5747.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and delivered on or before September 26, 2007.

DATED this 16th day of July, 2007.

## HEALTH AND WELFARE COMMITTEE

DEPARTMENT OF HEALTH AND WELFARE  
Skilled Nursing and Intermediate Care Facilities

Docket No. 16-0302-0701  
PENDING FEE RULE

### THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

#### 000. LEGAL AUTHORITY.

~~Pursuant to Title 39, Chapter 13, Idaho Code, the~~ The Idaho Legislature has delegated to the ~~Department~~ Board of Health and Welfare the responsibility to establish and enforce ~~such~~ rules ~~as may be necessary~~ to promote safe and adequate treatment of individuals within a Skilled Nursing or Intermediate Care Facility under Sections 39-1306, 39-1307, 39-1307A, and 39-1307B, Idaho Code. (1-1-88)( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### 004. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 007 and 008 of these rules. ( )

#### 005. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

#### 006. INCORPORATION BY REFERENCE.

No documents are incorporated by reference in this chapter of rules. ( )

#### 007. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE - - WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

05. Internet Website. The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

06. Division of Medicaid. The Department's Division of Medicaid is located at 3232

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### DEPARTMENT OF HEALTH AND WELFARE Skilled Nursing and Intermediate Care Facilities

Docket No. 16-0302-0701  
PENDING FEE RULE

Elder Street, Boise, ID 83705; Phone: (208) 334-5747. ( )

**07. Licensing and Survey Agency.** The Department's Licensing and Survey Agency, 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. ( )

**08. Licensing and Survey Agency Website.** <http://www.facilitystandards.idaho.gov>. ( )

### **008. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

**02. Public Records.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

**03. Disclosure of Resident Identity.** Information received by the Department through filed reports, inspections, or as otherwise authorized under the law, will not be disclosed publicly in such a manner as to identify individual residents except as necessary in a proceeding involving a question of licensure. ( )

**04. Public Availability of Deficiencies.** The survey documents relating to a facility will be available to the public upon written request to the Department and posted on the Licensing and Survey Agency Web site. ( )

### **009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Criminal History and Background Check.** A skilled nursing and intermediate care facility must complete a criminal history and background check on employees and contractors hired or contracted with after October 1, 2007, who have direct patient access to residents in the skilled nursing and intermediate care facility. A Department check conducted under IDAPA 16.05.06, "Criminal History and Background Checks," satisfies this requirement. Other criminal history and background checks may be accepted provided they meet the criteria in Subsection 009.02 of this rule and the entity conducting the check issues written findings. The entity must provide a copy of these written findings to both the facility and the employee. ( )

**02. Scope of a Criminal History and Background Check.** The criminal history and background check must, at a minimum, be a fingerprint-based criminal history and background check that includes a search of the following record sources: ( )

**a.** Federal Bureau of Investigation (FBI); ( )

**b.** Idaho State Police Bureau of Criminal Identification; ( )

## HEALTH AND WELFARE COMMITTEE

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### DEPARTMENT OF HEALTH AND WELFARE Skilled Nursing and Intermediate Care Facilities

Docket No. 16-0302-0701  
PENDING FEE RULE

c. Sexual Offender Registry; ( )

d. Office of Inspector General List of Excluded Individuals and Entities; and ( )

e. Nurse Aide Registry. ( )

**03. Availability to Work.** Any direct patient access individual hired or contracted with on or after October 1, 2007, must self-disclose all arrests and convictions before having access to residents. The individual is allowed to only work under supervision until the criminal history and background check is completed. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, the individual cannot have access to any resident. ( )

**04. Submission of Fingerprints.** The individual's fingerprints must be submitted to the entity conducting the criminal history and background check within twenty-one (21) days of his date of hire. ( )

**05. New Criminal History and Background Check.** An individual must have a criminal history and background check when: ( )

a. Accepting employment with a new employer; and ( )

b. His last criminal history and background check was completed more than three (3) years prior to his date of hire. ( )

**06. Use of Criminal History Check Within Three Years of Completion.** Any employer may use a previous criminal history and background check obtained under these rules if: ( )

a. The individual has received a criminal history and background check within three (3) years of his date of hire; ( )

b. The employer has documentation of the criminal history and background check findings; ( )

c. The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and ( )

d. No disqualifying crimes are found. ( )

**07. Employer Discretion.** The new employer, at its discretion, may require an individual to complete a criminal history and background check at any time, even if the individual has received a criminal history and background check within the three (3) years of his date of hire. ( )

~~004010.~~ -- 099.(RESERVED).



## HEALTH AND WELFARE COMMITTEE

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DEPARTMENT OF HEALTH AND WELFARE  
Skilled Nursing and Intermediate Care Facilities

Docket No. 16-0302-0701  
PENDING FEE RULE

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### (BREAK IN CONTINUITY OF SECTIONS)

304. -- 9959. (RESERVED).

**~~996. ADMINISTRATIVE PROVISIONS.~~**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 03, Sections 000, et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings."~~  
(12-31-91)

**~~997. CONFIDENTIALITY OF RECORDS.~~**

~~Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records."~~  
(12-31-91)

**~~998. INCLUSIVE GENDER.~~** ~~As used in these regulations, the masculine, feminine, or neuter gender, and the singular or plural number, will each be deemed to include the others whenever the context so requires.~~  
(1-1-88)

**~~999. SEVERABILITY.~~**

~~Idaho Department of Health and Welfare Rules, IDAPA 16.03.02, "Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities," are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of the chapter.~~  
(1-1-88)

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.07 - RULES FOR HOME HEALTH AGENCIES**

##### **DOCKET NO. 16-0307-0701 (FEE RULE)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Sections 39-2401(2), 56-1004A, and 56-1005(8), Idaho Code, is in response to the conclusion of the pilot project for criminal history checks in long-term care settings.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Home health agencies participated in a pilot project for criminal history and background checks for workers who have access, or provide care to individuals living in their own home. The pilot project and federal funding for these checks expired on September 30, 2007.

The Department has decided to continue to require the Department's criminal history and background check for an individual who is employed or contracted with and has access to patients through a home health agency. These rules were amended to require these checks. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 5, 2007, Idaho Administrative Bulletin, Vol. 07-9, pages 150 through 152.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

This fee or charge is being imposed pursuant to Section 56-1004A(5), Idaho Code, which requires an applicant for a criminal history and background check to be responsible for the cost of the check.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking has no fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS AND OBTAINING COPIES:** For assistance on technical questions concerning the pending rule, contact Randy May at (208) 334-5747.

## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Rules for Home Health Agencies**

**Docket No. 16-0307-0701**  
**PENDING FEE RULE**

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DATED this 5th day of October, 2007.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
kovachs@dhw.idaho.gov e-mail

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE / TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. This action is authorized pursuant to Sections 39-2401(2), 56-1004A, and 56-1005(8), Idaho Code, is in response to the conclusion of the pilot project for criminal history checks in long-term care settings.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Tuesday, September 11, 2007 at 6:00 p.m.**  
**Department of Health and Welfare**  
**1720 Westgate Drive**  
**Suite D, Room 119, Boise, Idaho**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Currently, home health agencies participate in a pilot project for criminal history and background checks for workers who have access, or provide care to individuals living in their own home. The pilot project and federal funding for these checks expire on September 30, 2007.**

**The Department has decided to continue to require the Department's criminal history and background check for an individual who is employed or contracted with and has access to patients through a home health agency. These rules are being amended to require these**

## HEALTH AND WELFARE COMMITTEE

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Rules for Home Health Agencies**

**Docket No. 16-0307-0701**  
**PENDING FEE RULE**

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checks.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)a, and b, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Under Section 56-1004A(9), Idaho Code, the federal pilot project to conduct criminal history and background checks in long-term care settings expires September 30, 2007. These rules are being promulgated to continue requiring these checks to protect vulnerable adults and children in long-term care settings.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: Applicants are responsible for the cost of the criminal history and background check under Section 56-1004A(5), Idaho Code.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking has no fiscal impact to the state general fund. The criminal history and background checks are paid for by applicants to cover Department costs for the checks.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Negotiated Rulemaking Notice was published in the Idaho Administrative Bulletin, June 6, 2007, Vol. 07-6, page 67.

**ASSISTANCE ON TECHNICAL QUESTIONS AND OBTAINING COPIES:** For assistance on technical questions concerning the temporary and proposed rule, contact Randy May at (208) 334-5747.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and delivered on or before September 26, 2007.

DATED this 16th day of July, 2007.

### ***THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE***

#### **005. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 008 and 010 of these rules. ( )

#### **006. ADMINISTRATIVE APPEALS.**

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing

## HEALTH AND WELFARE COMMITTEE

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### DEPARTMENT OF HEALTH AND WELFARE Rules for Home Health Agencies

Docket No. 16-0307-0701  
PENDING FEE RULE

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Contested Case Proceedings and Declaratory Rulings.” ( )

#### **007. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference in this chapter of rule. ( )

#### **008. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, “Use and Disclosure of Department Records.” ( )

**02. Public Records.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

**03. Disclosure of Patient Identity.** Information received by the Department through filed reports, inspections, or as otherwise authorized under the law, will not be disclosed publicly in such a manner as to identify individual patients except as necessary in a proceeding involving a question of licensure. ( )

**04. Public Availability of Deficiencies.** The survey documents relating to a facility will be available to the public upon written request to the Department and posted on the Licensing and Survey Agency Web site. ( )

#### **009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance with Department’s Criminal History and Background Check.** A home health agency must comply with IDAPA 16.05.06, “Criminal History and Background Checks.” ( )

**02. Direct Patient Access Individuals.** These rules apply to employees and contractors hired or contracted with after October 1, 2007, who have direct patient access. ( )

**03. Availability to Work.** Any direct patient access individual hired or contracted with on or after October 1, 2007, must complete an application before having access to patients. If a disqualifying crime as described in IDAPA 16.05.06, “Criminal History and Background Checks,” is disclosed, the individual cannot have access to any patient without a clearance by the Department. Once the notarized application is completed the individual can only work under supervision until the individual has been fingerprinted. The individual must have his fingerprints submitted to the Department within twenty-one (21) days of completion of the notarized application. ( )

#### **010. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE - - WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

## HEALTH AND WELFARE COMMITTEE

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### DEPARTMENT OF HEALTH AND WELFARE Rules for Home Health Agencies

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Docket No. 16-0307-0701  
PENDING FEE RULE

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**05. Internet Website.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

**06. Division of Medicaid.** The Department's Division of Medicaid is located at 3232 Elder Street, Boise, ID 83705; Phone: (208) 334-5747. ( )

**07. Licensing and Survey Agency.** The Department's Licensing and Survey Agency, 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. ( )

**08. Licensing and Survey Agency Website.** <http://www.facilitystandards.idaho.gov>. ( )

**00511. -- 019. (RESERVED).**

### (BREAK IN CONTINUITY OF SECTIONS)

**~~996. ADMINISTRATIVE PROVISIONS.~~**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings."~~ (7-1-93)

**~~997. CONFIDENTIALITY OF RECORDS.~~**

~~Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records."~~ (7-1-93)

**~~998. INCLUSIVE GENDER AND NUMBER.~~**

~~For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate.~~ (12-31-91)

**~~999. SEVERABILITY.~~**

~~Idaho Department of Health and Welfare Rules, IDAPA 16.03.07, are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.~~ (7-1-93)

**996. -- 999. (RESERVED).**

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.11 - RULES GOVERNING INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED (ICF/MR)**

##### **DOCKET NO. 16-0311-0701 (FEE RULE)**

##### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Sections 39-1303a, 39-1307, 56-202(b), 56-1004A, and 67-6532, Idaho Code and in response of the conclusion of a pilot project for criminal history checks in long-term care settings.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**Intermediate Care Facilities for the Mentally Retarded (ICF/MR) participated in a pilot project for criminal history and background checks for workers who have access, or provide care to residents in long-term care facilities. The pilot project and federal funding for these checks expired on September 30, 2007.**

**In order to protect vulnerable adults living in ICF/MR, the Department has decided to continue these criminal history and background checks. This rule change allows a facility to use either the Department's criminal history and background check or another entity's check. The pending rule is being adopted as proposed. The complete text of the proposed rule published in the September 5, 2007, Idaho Administrative Bulletin, Vol. 07-9, pages 154 through 158.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased.

**This fee or charge is being imposed pursuant to Section 56-1004A(5), Idaho Code, which requires an applicant for a criminal history and background check to be responsible for the cost of the check.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. This rulemaking has no fiscal impact to the state general fund. A criminal history and background check is paid for by the applicant.

## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE  
Intermediate Care Facilities for the Mentally Retarded**

**Docket No. 16-0311-0701  
PENDING FEE RULE**

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**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Randy May at (208) 334-5747.

DATED this 5th day of November, 2007.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@dhw.idaho.gov e-mail

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. This action is authorized pursuant to Sections 39-1303a, 39-1307, 56-202(b), 56-1004A, and 67-6532, Idaho Code and in response of the conclusion of a pilot project for criminal history checks in long-term care settings.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Tuesday, September 11, 2007 at 6:00 p.m.  
Department of Health and Welfare  
1720 Westgate Drive  
Suite D, Room 119, Boise, Idaho**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Currently, Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) participate in a pilot project for criminal history and background checks for workers who have access, or provide care to residents in long-term care facilities. The pilot project and federal funding for these checks expire on September 30, 2007.**



## HEALTH AND WELFARE COMMITTEE

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Intermediate Care Facilities for the Mentally Retarded**

**Docket No. 16-0311-0701**  
**PENDING FEE RULE**

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In order to protect vulnerable adults living in ICFs/MR, the Department has decided to continue these criminal history and background checks. This rule change allows a facility to use either the Department's criminal history and background check or another entity's check. Checks conducted by other entities at a minimum, must:

1. Be fingerprint-based; and
2. Include a search of specified sources for criminal history and background records.

This rule change states when an individual is available to work and provides other requirements necessary to complete a criminal history and background check.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)a, and b, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Under Section 56-1004A(9), Idaho Code, the federal pilot project to conduct criminal history and background checks in long-term care settings expires September 30, 2007. These rules are being promulgated to continue requiring these checks to protect vulnerable adults and children in long-term care facilities.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

**Applicants are responsible for the cost of the criminal history and background check under Section 56-1004A(5), Idaho Code.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

This rulemaking has no fiscal impact to the state general fund. The criminal history and background checks are paid for by applicants to cover Department costs for the checks.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 6, 2007, Vol. 07-6, page 74.

**ASSISTANCE ON TECHNICAL QUESTIONS AND OBTAINING COPIES:** For assistance on technical questions concerning the temporary and proposed rule, contact Randy May at (208) 334-5747.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and delivered on or before September 26, 2007.

DATED this 16th day of July, 2007.

## HEALTH AND WELFARE COMMITTEE

DEPARTMENT OF HEALTH AND WELFARE  
Intermediate Care Facilities for the Mentally Retarded

Docket No. 16-0311-0701  
PENDING FEE RULE

### THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

#### 000. LEGAL AUTHORITY.

The Idaho Legislature has ~~vested authority in~~ given the Department and the Board of Health and Welfare the authority to adopt rules for the operation in the state of Idaho of "Intermediate Care Facilities" for the treatment of mental retardation and related conditions, ~~pursuant to~~ under Sections 39-1303a, 39-1307, and 67-6532, Idaho Code, ~~and consistent with rules and regulations issued by the U.S. Department of Health, Education and Welfare.~~ (For ~~the purpose of~~ determining applicable zoning restrictions, ~~refer to~~ Sections 67-6530 through 67-6532, Idaho Code, apply.)  
(12-31-91)( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### 005. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 008 and 010 of these rules. ( )

#### 006. ADMINISTRATIVE APPEALS.

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

#### 007. INCORPORATION BY REFERENCE.

No documents are incorporated by reference in this chapter of rule. ( )

#### 008. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

03. Disclosure of Resident Identity. Information received by the Department through filed reports, inspections, or as otherwise authorized under the law, will not be disclosed publicly in such a manner as to identify individual residents except as necessary in a proceeding involving a question of licensure. ( )

04. Public Availability of Deficiencies. The survey documents relating to a facility will be available to the public upon written request to the Department and posted on the Licensing

## HEALTH AND WELFARE COMMITTEE

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and Survey Agency Web site. ( )

### **009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Criminal History and Background Check.** An intermediate care facility for the treatment of individuals with mental retardation must complete a criminal history and background check on employees and contractors hired or contracted with after October 1, 2007, who have direct patient access to residents in the intermediate care facility. A Department check conducted under IDAPA 16.05.06, "Criminal History and Background Checks," satisfies this requirement. Other criminal history and background checks may be accepted provided they meet the criteria in Subsection 009.02 of this rule and the entity conducting the check issues written findings. The entity must provide a copy of these written findings to both the facility and the employee. ( )

**02. Scope of a Criminal History and Background Check.** The criminal history and background check must, at a minimum, be a fingerprint-based criminal history and background check that includes a search of the following record sources: ( )

- a.** Federal Bureau of Investigation (FBI); ( )
- b.** Idaho State Police Bureau of Criminal Identification; ( )
- c.** Sexual Offender Registry; ( )
- d.** Office of Inspector General List of Excluded Individuals and Entities; and ( )
- e.** Nurse Aide Registry. ( )

**03. Availability to Work.** Any direct patient access individual hired or contracted with on or after October 1, 2007, must self-disclose all arrests and convictions before having access to residents. The individual is allowed to only work under supervision until the criminal history and background check is completed. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, the individual cannot have access to any resident. ( )

**04. Submission of Fingerprints.** The individual's fingerprints must be submitted to the entity conducting the criminal history and background check within twenty-one (21) days of his date of hire. ( )

**05. New Criminal History and Background Check.** An individual must have a criminal history and background check when: ( )

- a.** Accepting employment with a new employer; and ( )
- b.** His last criminal history and background check was completed more than three (3) years prior to his date of hire. ( )

**06. Use of Criminal History Check Within Three Years of Completion.** Any

## HEALTH AND WELFARE COMMITTEE

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### DEPARTMENT OF HEALTH AND WELFARE Intermediate Care Facilities for the Mentally Retarded

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employer may use a previous criminal history and background check obtained under these rules if: ( )

**a.** The individual has received a criminal history and background check within three (3) years of his date of hire; ( )

**b.** The employer has documentation of the criminal history and background check findings; ( )

**c.** The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and ( )

**d.** No disqualifying crimes are found. ( )

**07. Employer Discretion.** The new employer, at its discretion, may require an individual to complete a criminal history and background check at any time, even if the individual has received a criminal history and background check within the three (3) years of his date of hire. ( )

### **010. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**05. Internet Website.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>". ( )

**06. Division of Medicaid.** The Department's Division of Medicaid is located at 3232 Elder Street, Boise, ID 83705; Phone: (208) 334-5747. ( )

**07. Licensing and Survey Agency.** The Department's Licensing and Survey Agency, 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. ( )

**08. Licensing and Survey Agency Website.** <http://www.facilitystandards.idaho.gov>. ( )

**00511. -- 049. (RESERVED).**

## HEALTH AND WELFARE COMMITTEE

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DEPARTMENT OF HEALTH AND WELFARE  
Intermediate Care Facilities for the Mentally Retarded

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### (BREAK IN CONTINUITY OF SECTIONS)

701. -- 995~~9~~. (RESERVED).

**~~996. ADMINISTRATIVE PROVISIONS.~~**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Case Proceedings and Declaratory Rulings."~~ (12-31-91)

**~~997. CONFIDENTIALITY.~~**

~~Information received by the Department from field reports and inspections is subject to the provisions of Section 39-1310, Idaho Code, and Idaho Department of Health and Welfare Rules, IDAPA 16.03.05, Subsections 011.01. through 011.02, "Use and Disclosure of Department Records."~~ (12-31-91)

**~~998. INCLUSIVE GENDER.~~**

~~For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate.~~ (7-1-80)

**~~999. SEVERABILITY.~~**

~~Idaho Department of Health and Welfare Rules, IDAPA 16.03.11, are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.~~ (7-1-80)

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.15 - RULES AND MINIMUM STANDARDS GOVERNING SEMI-INDEPENDENT GROUP RESIDENTIAL FACILITIES FOR THE DEVELOPMENTALLY DISABLED OR MENTALLY ILL**

##### **DOCKET NO. 16-0315-0701 (FEE RULE)**

##### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Sections 39-4605, 56-1004A, and 56-1005(8), and 66-317, Idaho Code, in response to the conclusion of the pilot project for criminal history checks in long-term care settings.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Semi-independent group residential facilities for the developmentally disabled or mentally ill participated in a pilot project for criminal history and background checks for workers who have access, or provide care to residents living in semi-independent group residential facilities. The pilot project and federal funding for these checks expired on September 30, 2007.

In order to protect these individuals living in semi-independent group residential facilities for the developmentally disabled and mentally ill, the Department has decided to continue to require the criminal history and background checks for individuals with access to residents. These rules were amended to require these checks. The pending rule is being adopted as proposed. The complete text of the proposed rule published in the September 5, 2007, Idaho Administrative Bulletin, Vol. 07-9, pages 159 through 162.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 56-1004A(5), Idaho Code, which requires an applicant for a criminal history and background check to be responsible for the cost of the check.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. This rulemaking has no fiscal impact to the state general fund. A criminal history and background check is paid for by the applicant.

## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Semi-Independent Group Residential Facilities for DD/MI**

**Docket No. 16-0315-0701**  
**PENDING FEE RULE**

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**ASSISTANCE ON TECHNICAL QUESTIONS AND OBTAINING COPIES:** For assistance on technical questions concerning the pending rule, contact Randy May at (208) 334-5747.

DATED this 5th day of November, 2007.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@dhw.idaho.gov e-mail

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. This action is authorized pursuant to Sections 39-4605, 56-1004A, and 56-1005(8), and 66-317, Idaho Code, in response to the conclusion of the pilot project for criminal history checks in long-term care settings.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Tuesday, September 11, 2007 at 6:00 p.m.**  
**Department of Health and Welfare**  
**1720 Westgate Drive**  
**Suite D, Room 119, Boise, ID**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Currently, semi-independent group residential facilities for the developmentally disabled or mentally ill participate in a pilot project for criminal history and background checks for workers who have access, or provide care to residents living in semi-independent group residential facilities. The pilot project and federal funding for these checks expire on September 30, 2007.**

## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Semi-Independent Group Residential Facilities for DD/MI**

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**PENDING FEE RULE**

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In order to protect these individuals living in semi-independent group residential facilities for the developmentally disabled and mentally ill, the Department has decided to continue to require the criminal history and background checks for individuals with access to residents. These rules are being amended to require these checks.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)a, and b, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Under Section 56-1004A(9), Idaho Code, the federal pilot project to conduct criminal history and background checks in long-term care settings expires September 30, 2007. These rules are being promulgated to continue requiring these checks to protect vulnerable adults and children in long-term care facilities.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

**Applicants are responsible for the cost of the criminal history and background check under Section 56-1004A(5), Idaho Code.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

This rulemaking has no fiscal impact to the state general fund. The criminal history and background checks are paid for by applicants to cover Department costs for the checks.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Negotiated Rulemaking Notice was published in the Idaho Administrative Bulletin, June 6, 2007, Vol. 07-6, page 75.

**ASSISTANCE ON TECHNICAL QUESTIONS AND OBTAINING COPIES:** For assistance on technical questions concerning the temporary and proposed rule, contact Randy May at (208) 334-5747.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and delivered on or before September 26, 2007.

DATED this 16th day of July, 2007.

***THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE***



## HEALTH AND WELFARE COMMITTEE

**DEPARTMENT OF HEALTH AND WELFARE**  
**Semi-Independent Group Residential Facilities for DD/MI**

**Docket No. 16-0315-0701**  
**PENDING FEE RULE**

### **000. LEGAL AUTHORITY.**

~~Under authority vested in~~ The Idaho Legislature has given to the Board of Health and Welfare ~~by Title 39, Chapter 46, under Sections 39-4605 and by Title 66, Chapter 3, Section 66-317(g), Idaho Code, the following rules are hereby~~ authority to adopted rules for semi-independent group residential facilities in the state of Idaho. ~~(12-31-91)( )~~

### **(BREAK IN CONTINUITY OF SECTIONS)**

### **004. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 007 and 008 of these rules. ( )

### **005. ADMINISTRATIVE APPEALS.**

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

### **006. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference in this chapter of rule. ( )

### **007. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**05. Internet Website.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ( )

**06. Division of Medicaid.** The Department's Division of Medicaid is located at 3232 Elder Street, Boise, ID 83705; Phone: (208) 334-5747. ( )

**07. Licensing and Survey Agency.** The Department's Licensing and Survey Agency, 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. ( )

**08. Licensing and Survey Agency Website.** <http://www.facilitystandards.idaho.gov>.

## HEALTH AND WELFARE COMMITTEE

DEPARTMENT OF HEALTH AND WELFARE  
Semi-Independent Group Residential Facilities for DD/MI

Docket No. 16-0315-0701  
PENDING FEE RULE

( )

### **008. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records."  
( )

**02. Public Records.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure.  
( )

**03. Disclosure of Resident Identity.** Information received by the Department through filed reports, inspections, or as otherwise authorized under the law, will not be disclosed publicly in such a manner as to identify individual residents except as necessary in a proceeding involving a question of licensure.  
( )

**04. Public Availability of Deficiencies.** The survey documents relating to a facility will be available to the public upon written request to the Department and posted on the Licensing and Survey Agency Web site.  
( )

### **009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance with Department's Criminal History and Background Check.** A semi-independent group residential facility for the developmentally disabled or mentally ill must comply with IDAPA 16.05.06, "Criminal History and Background Checks."  
( )

**02. Direct Patient Access Individuals.** These rules apply to employees and contractors hired or contracted with after October 1, 2007, who have direct patient access.  
( )

**03. Availability to Work.** Any direct patient access individual hired or contracted with on or after October 1, 2007, must complete an application before having access to patients. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, the individual cannot have access to any patient without a clearance by the Department. Once the notarized application is completed the individual can only work under supervision until the individual has been fingerprinted. The individual must have his fingerprints submitted to the Department within twenty-one (21) days of completion of the notarized application.  
( )

**00410. -- 099. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

## HEALTH AND WELFARE COMMITTEE

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DEPARTMENT OF HEALTH AND WELFARE  
Semi-Independent Group Residential Facilities for DD/MI

Docket No. 16-0315-0701  
PENDING FEE RULE

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801. -- 995~~9~~. (RESERVED).

**~~996. ADMINISTRATIVE PROVISIONS.~~**

~~Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, "Rules Governing Contested Case Proceedings and Declaratory Rulings."~~ (12-31-91)

**~~997. CONFIDENTIALITY.~~**

~~Before any information about a patient, client, registrant, applicant, or recipient contained in Departmental records can be released to the person himself, to another Departmental unit, to another governmental agency or to a private individual or organization, the unit of the Department with custody of the record must comply with Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records."~~ (3-15-85)

**~~998. INCLUSIVE GENDER.~~**

~~For the purposes of this chapter, words used in the masculine gender include the feminine, and vice versa, where appropriate.~~ (3-15-85)

**~~999. SEVERABILITY.~~**

~~Idaho Department of Health and Welfare Rules, IDAPA 16.03.15, are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.~~ (3-15-85)

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.18 - MEDICAID COST-SHARING**

#### **DOCKET NO. 16-0318-0701 (FEE RULE)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b), 56-239 and 56-240, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the January 3, 2007 Idaho Administrative Bulletin, Vol. 07-1, pages 222 through 224.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

**The nominal fee amount allowed for by federal law for the inappropriate use of services is set at three dollars (\$3) beginning February 1, 2007.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

**The implementation of co-payments are cost neutral to the Medicaid budget. Co-payments will be collected and retained by service providers.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Robin Pewtress at (208) 364-1892.

DATED this 5th day of September, 2007.

Sherri Kovach, Program Supervisor  
DHW - Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
kovachs@dhw.idaho.gov e-mail

## HEALTH AND WELFARE COMMITTEE

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Medicaid Cost-Sharing**

**Docket No. 16-0318-0701**  
**PENDING FEE RULE**

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### **THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is February 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-239 and 56-240, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

<b>Date:</b>	<b>Thursday, January 11, 2007</b>	<b>Tuesday, January 16, 2007</b>	<b>Tuesday, January 23, 2007</b>
<b>Time:</b>	<b>7:00 p.m.</b>	<b>5:30 p.m.</b>	<b>7:00 p.m.</b>
<b>Place:</b>	<b>DHW - Region I Office 1120 Ironwood Drive Suite 102 Coeur d'Alene, ID</b>	<b>DHW - Region IV Office 1720 Westgate Dr. Suite D, Room 119 Boise, ID</b>	<b>Idaho Falls Public Library 457 Broadway Library Conference Room Idaho Falls, Idaho</b>

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department is establishing cost-sharing measures for Medicaid participants to comply with HB 663 passed by the 2006 Legislature. The purpose of this rule change is to increase awareness and responsibility of Medicaid participants regarding the cost of their health care, and encourage them to use the most appropriate cost-effective care setting.

These new cost-sharing measures require participants to pay for part of the cost of Medicaid services, in the form of a co-payment to providers, when they have accessed certain services inefficiently or inappropriately. These rules provide the amount a participant must pay for the inappropriate use of services and references the type of services found in the Medicaid Basic Plan Benefits chapter that these fees will apply to.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is being done to comply with deadlines in amendments to governing law.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The nominal fee amount allowed for by federal law for the inappropriate use of services

## HEALTH AND WELFARE COMMITTEE

**DEPARTMENT OF HEALTH AND WELFARE**  
**Medicaid Cost-Sharing**

**Docket No. 16-0318-0701**  
**PENDING FEE RULE**

is set at three dollars (\$3) beginning February 1, 2007.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

**The implementation of co-payments are cost neutral to the Medicaid budget. Co-payments will be collected and retained by service providers.**

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes to these rules are being made to implement legislation passed during the 2006 legislative session.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Robin Pewtress at (208) 364-1892.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before January 24, 2007.

DATED this 14th day of November, 2006.

### ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**011. -- ~~199049~~. (RESERVED).**

#### **050. GENERAL COST-SHARING.**

**01. Cost-Sharing Maximum Amount.** A family will be required to pay out of pocket costs not to exceed five percent (5%) of the family's anticipated gross quarterly income unless an exception is made as provided in Subsection 050.02 of this rule. ( )

**02. Exception to Cost-Sharing Maximum.** A family will be required to pay cost-sharing amounts as provided in Sections 215 and 400 of these rules. These cost-sharing amounts may exceed the family's five percent (5%) of anticipated gross quarterly income. ( )

**03. Proof of Cost-Sharing Payment.** A family that has exceeded the five percent (5%) cost-sharing of the family's anticipated gross quarterly income must provide proof to the Department of the amounts incurred. ( )

**04. Excess Cost-Sharing.** A family that establishes proof of payment for cost-sharing that exceeds the five percent (5%) of the family's anticipated gross quarterly income will be reimbursed by the Department for the amount paid that exceeds the five percent (5%), except as provided in Subsection 050.02 of this rule. ( )

## HEALTH AND WELFARE COMMITTEE

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### DEPARTMENT OF HEALTH AND WELFARE Medicaid Cost-Sharing

Docket No. 16-0318-0701  
PENDING FEE RULE

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**05. Cost-Sharing Suspended.** A family that exceeds the five percent (5%) maximum amount for cost-sharing will not be required to pay a cost-sharing portion for any family participant for the remainder of the calendar quarter in which proof of payment is established.

( )

**051. - 199. (RESERVED).**

### (BREAK IN CONTINUITY OF SECTIONS)

**251. -- 299. (RESERVED).**

### **300. CO-PAYMENTS FOR MEDICAID SERVICES.**

Medicaid participants are responsible for making co-payments for the following services under the following circumstances in Subsections 300.01 and 300.02 of this rule.

( )

**01. Accessing Hospital Emergency Department for Non-Emergency Medical Conditions.** A participant who seeks care at a hospital emergency department for services that do not meet the definition of an emergency medical condition as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," may be required to pay a co-payment to the provider. The amount of the co-payment is provided in Section 310 of these rules. A participant who must access a hospital emergency department in order to receive routine services for his medical condition is exempt from this provision.

( )

**02. Accessing Emergency Transportation Services for Non-Emergency Medical Conditions.** A participant who accesses emergency transportation services for a condition that is determined by the Department to be a non-emergency medical condition may be required to pay a co-payment to the provider of the service. The amount of the co-payment is provided in Section 310 of these rules. Certain participants are exempt from this co-payment. Exempt participants are:

( )

**a.** A child under the age of nineteen (19) with family income less than or equal to one hundred and thirty-three percent (133%) of the current federal poverty guidelines (FPG);

( )

**b.** A pregnant or post-partum woman when the medical condition for the needed transportation is related to the pregnancy;

( )

**c.** An inpatient in a hospital, nursing facility, intermediate care facility for persons with mental retardation (ICF/MR) or other medical institution, who is required to pay all but a nominal amount of his income to the institution for his care;

( )

**d.** A Medicare beneficiary, whose Medicaid benefits consist of assistance with his Medicare cost-sharing obligations;

( )

**e.** A participant receiving hospice care;

( )

## HEALTH AND WELFARE COMMITTEE

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DEPARTMENT OF HEALTH AND WELFARE  
Medicaid Cost-Sharing

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f. A child in foster care receiving aid or assistance under the Social Security Act (SSA), Title IV, Part B; ( )

g. A participant receiving adoption or foster care assistance under the Social Security Act (SSA), Title IV, Part E, regardless of age; and ( )

h. A woman eligible under the breast and cervical cancer eligibility group. ( )

**301. -- 309. (RESERVED).**

**310. CO-PAYMENT FEE AMOUNTS.**

**01. Nominal Amount.** The amount of the co-payment must be a nominal amount as provided in 42 CFR 447.54. This nominal amount is set by the U.S. Department of Health and Human Services. ( )

**02. Fee Amount.** Beginning on February 1, 2007, the nominal fee amount required to be paid by the participant as a co-payment is three dollars (\$3). This co-payment amount will be adjusted annually as determined by the Secretary of Human Services. ( )

**03. Annual Increase.** The nominal fee amount will be increased annually by an adjusted percentage rate determined by the Secretary of Health and Human Services as set in the Social Security Act Section 1916. ( )

**311. -- 999. (RESERVED).**



## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO**

##### **DOCKET NO. 16-0322-0701 (FEE RULE)**

##### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Sections 39-3305, 56-1004A, and 56-1005(8), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**Residential care and assisted living facilities participated in a pilot project for criminal history and background checks for workers who have access, or provide care to residents in long-term care facilities. The pilot project and federal funding for these checks expired on September 30, 2007.**

**In order to protect vulnerable adults living in residential care or assisted living facilities, the Department has decided to continue these criminal history and background checks. This rule change allows a facility to use either the Department's criminal history and background check or another entity's check. The pending rule is being adopted as proposed. The complete text of the proposed rule published in the September 5, 2007, Idaho Administrative Bulletin, Vol. 07-9, pages 163 through 165.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 56-1004A(5), Idaho Code, which requires an applicant for a criminal history and background check to be responsible for the cost of the check.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. This rulemaking has no fiscal impact to the state general fund. A criminal history and background check is paid for by the applicant.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Randy May at (208) 334-5747.

## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Residential Care or Assisted Living Facilities in Idaho**

**Docket No. 16-0322-0701**  
**PENDING FEE RULE**

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DATED this 5th day of November, 2007.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@dhw.idaho.gov e-mail

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. This action is authorized pursuant to Sections 39-3305, 56-1004A, and 56-1005(8), Idaho Code, and in response of the conclusion of a pilot project for criminal history checks in long-term care settings.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Tuesday, September 11, 2007 at 6:00 p.m.**  
**Department of Health & Welfare**  
**1720 Westgate Drive**  
**Suite D, Room 119, Boise, ID**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Currently, residential care and assisted living facilities participate in a pilot project for criminal history and background checks for workers who have access, or provide care to residents in long-term care facilities. The pilot project and federal funding for these checks expire on September 30, 2007.**

**In order to protect vulnerable adults living in residential care or assisted living facilities, the Department has decided to continue these criminal history and background checks. This rule change allows a facility to use either the Department's criminal history and background check or another entity's check. Checks conducted by other entities at a minimum, must:**

## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Residential Care or Assisted Living Facilities in Idaho**

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1. Be fingerprint-based; and
2. Include a search of specified sources for criminal history and background records.

This rule change states when an individual is available to work and provides other requirements necessary to complete a criminal history and background check.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)a, and b, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Under Section 56-1004A(9), Idaho Code, the federal pilot project to conduct criminal history and background checks in long-term care settings expires September 30, 2007. These rules are being promulgated to continue requiring these checks to protect vulnerable adults and children in long-term care facilities.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

**Applicants are responsible for the cost of the criminal history and background check under Section 56-1004A(5), Idaho Code.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

This rulemaking has no fiscal impact to the state general fund. The criminal history and background checks are paid for by applicants to cover Department costs for the checks.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 6, 2007, Vol. 07-6, page 76.

**ASSISTANCE ON TECHNICAL QUESTIONS AND OBTAINING COPIES:** For assistance on technical questions concerning the temporary and proposed rule, contact Randy May at (208) 334-5747.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and delivered on or before September 26, 2007.

DATED this 16th day of July, 2007.

***THE FOLLOWING IS THE TEXT OF PENDING FEE RULE***

## HEALTH AND WELFARE COMMITTEE

DEPARTMENT OF HEALTH AND WELFARE  
Residential Care or Assisted Living Facilities in Idaho

Docket No. 16-0322-0701  
PENDING FEE RULE

007. -- 0098. (RESERVED).

### **009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Criminal History and Background Check.** A residential care or assisted living facility must complete a criminal history and background check on employees and contractors hired or contracted with after October 1, 2007, who have direct patient access to residents in the residential care or assisted living facility. The Department check conducted under IDAPA 16.05.06, "Criminal History and Background Checks," satisfies this requirement. Other criminal history and background checks may be acceptable provided they meet the criteria in Subsection 009.02 of this rule and the entity conducting the check issues written findings. The entity must provide a copy of these written findings to both the facility and the employee. ( )

**02. Scope of a Criminal History and Background Check.** The criminal history and background check must, at a minimum, be fingerprint-based and include a search of the following record sources: ( )

- a.** Federal Bureau of Investigation (FBI); ( )
- b.** Idaho State Police Bureau of Criminal Identification; ( )
- c.** Sexual Offender Registry; ( )
- d.** Office of Inspector General List of Excluded Individuals and Entities; and ( )
- e.** Nurse Aide Registry. ( )

**03. Availability to Work.** Any direct patient access individual hired or contracted with on or after October 1, 2007, must self-disclose all arrests and convictions before having access to residents. The individual is allowed to only work under supervision until the criminal history and background check is completed. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, the individual cannot have access to any resident. ( )

**04. Submission of Fingerprints.** The individual's fingerprints must be submitted to the entity conducting the criminal history and background check within twenty-one (21) days of his date of hire. ( )

**05. New Criminal History and Background Check.** An individual must have a criminal history and background check when: ( )

- a.** Accepting employment with a new employer, and ( )
- b.** His last criminal history and background check was completed more than three (3) years prior to his date of hire. ( )

## HEALTH AND WELFARE COMMITTEE

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DEPARTMENT OF HEALTH AND WELFARE  
Residential Care or Assisted Living Facilities in Idaho

Docket No. 16-0322-0701  
PENDING FEE RULE

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**06. Use of Previous Criminal History and Background Check.** Any employer may use a previous criminal history and background check obtained under these rules if: ( )

**a.** The individual has received a criminal history and background check within three (3) years of his date of hire; ( )

**b.** The employer has documentation of the criminal history and background check findings; ( )

**c.** The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification; and ( )

**d.** No disqualifying crimes are found. ( )

**07. Employer Discretion.** The new employer, at its discretion, may require an individual to complete a criminal history and background check at any time, even if the individual has received a criminal history and background check within three (3) years of his date of hire. ( )

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.05.06 - RULES GOVERNING MANDATORY CRIMINAL HISTORY CHECKS**

**DOCKET NO. 16-0506-0601 (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING - PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized under Sections 56-202(b), 56-203(b), 56-204A, 56-1004(A), 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, and 39-5604, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the Idaho Administrative Bulletin, January 3, 2007, Vol. 07-1, pages 228 and 229.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. The following is a specific description of the fee or charge imposed or increased:

**Criminal history checks cost the applicant a fee that under statute is required to be paid by the applicant.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. The fiscal impact of the repeal of the chapter is the same as Docket 16-0506-0602 published in this bulletin.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the pending rules, contact Mond Warren at (208) 334-5997.

DATED this 16th day of July, 2007.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor (208)

P.O. Box 83720 Boise, Idaho 83720-0036  
334-5564 phone; (208) 334-6558 fax  
kovachs@dhw.idaho.gov e-mail

## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Rules Governing Mandatory Criminal History Checks**

**Docket No. 16-0506-0601**  
**PENDING FEE RULE**

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### ***THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(b), 56-204A, 56-1004(A), 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-1213, 39-3520, and 39-5604, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Legislature has given the Department the responsibility to protect children and vulnerable adults who are at risk of being harmed by individuals who have criminal convictions, offenses, or have substantiated abuse or neglect cases against them. In order to meet this responsibility, the Department needs to revise and update its rules. This chapter of rules is being repealed and rewritten in Docket 16-506-0602 to meet those requirements and to comply with SB 1327 passed by the 2006 Legislature.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

To protect the public health, safety and welfare of the vulnerable adults and children in Idaho.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: Criminal history checks cost the applicant a fee that under statute is required to be paid by the applicant.

The fee amount is being published in the rewrite of this chapter, under Docket 16-0506-0602 published in this bulletin. The 2006 Legislature enacted Section 56-1004A, Idaho Code, that requires an applicant to be responsible for the cost of a criminal history and background check. This temporary fee rule will define the actual cost and require applicants to pay for the criminal history and background checks.

## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Rules Governing Mandatory Criminal History Checks**

**Docket No. 16-0506-0601**  
**PENDING FEE RULE**

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**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The Department currently charges \$45.00 which does not cover the Department's costs. The difference is made up by general fund money. The Department has implemented new systems to increase the efficiency of processing background checks which reduces the administrative processing costs, however a study of background checks revealed the Department's current cost per check is \$48.00. It is anticipated this will result in a cost savings of \$22,900 with a general fund savings of \$11,450 for the fiscal year 2007. This fiscal impact for the repeal of the chapter is the same as Docket 16-0506-0602 published in this bulletin.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 7, 2006, Vol. 06-6, page 104.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Mond Warren at (208) 334-5997.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before January 24, 2007.

DATED this 3rd day of November, 2006.

***IDAPA 16.05.06 IS BEING REPEALED IN ITS ENTIRETY***



## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS**

##### **DOCKET NO. 16-0506-0602 (CHAPTER REWRITE)**

##### **NOTICE OF RULEMAKING - PENDING FEE RULE**

**EFFECTIVE DATE:** The effective dates for the amendments to the temporary rule are January 1, 2007, and October 1, 2007. This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule and amended a temporary rule. This action is authorized under Sections 56-202(b), 56-203(b), 56-204A, 56-1004(A), 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, and 39-5604, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The text of the pending rule is being amended to add individuals in long-term care settings that were required to have criminal history and background checks through the federal pilot project which expires on September 30, 2007. The rules were also amended to update the list of individuals that are required to have checks under the Home and Community-Based Services (HCBS) in the Medicaid Enhanced Plan Benefits chapter. Other changes have been made to clarify that the Department may consider underlying facts and circumstances when making determinations on the results of the check.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department and Board have amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the January 3, 2007, Idaho Administrative Bulletin, Vol. 07-1, pages 231 through 245.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. This fee or charge is being imposed under Section 56-1004A, Idaho Code. The following is a specific description of the fee or charge imposed or increased:

The 2006 Legislature enacted Section 56-1004A, Idaho Code that required an applicant to be responsible for the cost of a criminal history and background check. The rule defines the actual cost of the Department's check, which is \$48, and requires applicant to pay for

## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE  
Criminal History and Background Checks**

**Docket No. 16-0506-0602  
PENDING FEE RULE**

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the criminal history and background check.

Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The Department implemented new systems to increase the efficiency of processing background checks which reduces the administrative processing costs, however a study of background checks revealed the Department's current cost per check is \$48.00. The fee amount charged in the repealed chapter of rule was \$45. The fiscal impact of requiring the applicant to pay the actual cost for the check will result in a cost savings of \$22,900 with a general fund savings of \$11,450 for the fiscal year 2007.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the pending rules, contact Mond Warren at (208) 334-5997.

DATED this 16th day of July, 2007.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
kovachs@dhw.idaho.gov e-mail

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(b), 56-204A, 56-1004(A), 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, and 39-5604, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 2007.

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The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule making for this rewritten chapter of rules:

The Legislature has given the Department the responsibility to protect children and vulnerable adults who are at risk of being harmed by individuals who have criminal convictions, offenses, or have substantiated abuse or neglect cases against them. In order to meet this responsibility, the Department requires criminal history and background checks for certain types of providers, certification and licensure applicants, and adoptive and foster care homes. This chapter is being rewritten to provide clearer requirements for applicants, employers, contractors, and providers on how the results of these checks may be used and distributed. The list of disqualifying crimes is being amended to add crimes or offenses not currently in the rules and amend the length of time for disqualification for certain crimes. The rules will also address the online application and reporting systems implemented by the Department for processing criminal history and background checks.

The rewritten chapter of rules will:

1. Comply with Idaho law amended in 2006 relating to the costs and fees for criminal history and background checks;
2. Update requirements for new technology that is used to process fingerprints and online applications;
3. Clarify when an individual is able to provide care or services for an employer;
4. Clarify when an applicant for certification and licensure receives a clearance;
5. Amend and add disqualifying crimes, offenses, and the length of time that results in a denial or clearance;
6. Add requirements for the disposition of the criminal history and background check results;
7. Amend and update the list of individuals required to comply with this chapter of rules; and
8. Remove obsolete language and add requirements to meet the Administrative Procedures Act.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

To protect the public health, safety and welfare of the vulnerable adults and children in Idaho.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

The 2006 Legislature enacted Section 56-1004A, Idaho Code, that requires an applicant

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to be responsible for the cost of a criminal history and background check. This temporary fee rule will define the actual cost and require applicants to pay for the criminal history and background checks.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The Department currently charges \$45.00 which does not cover the Department's costs. The difference is made up by general fund money. The Department has implemented new systems to increase the efficiency of processing background checks which reduces the administrative processing costs, however a study of background checks revealed the Department's current cost per check is \$48.00. It is anticipated this will result in a cost savings of \$22,900 with a general fund savings of \$11,450 for the fiscal year 2007.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 7, 2006, Vol. 06-6, page 104.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Mond Warren at (208) 334-5997.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before January 24, 2007.

DATED this 3rd day of November, 2006.

### ***THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE***

#### **IDAPA 16 TITLE 05 CHAPTER 06**

#### **16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS**

##### **000. LEGAL AUTHORITY.**

The Idaho Legislature has authorized the Department of Health and Welfare to promulgate rules to conduct criminal history and background checks under Sections 56-202(b), 56-203(b), 56-204A, 56-1004(A), 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520 and 39-5604, Idaho Code. ( )

##### **001. TITLE, SCOPE AND POLICY.**

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**01. Title.** The title of this chapter is IDAPA 16.05.06, “Criminal History and Background Checks.” ( )

**02. Scope.** These rules assist the Department in the protection of children and vulnerable adults by providing requirements to conduct criminal history and background checks of individuals licensed or certified by the Department, or who provide care or services to vulnerable adults or children. Individuals requiring a criminal history check are identified in Department rules. ( )

**03. Policy.** It is the Department’s policy to conduct fingerprint-based criminal history and background checks on individuals who have completed a criminal history application. The criminal history applicant is required to disclose any pertinent information of crimes or offenses that would disqualify the individual from providing care or services to vulnerable populations. The Department obtains information for these criminal history and background checks from the following sources: ( )

- a. Federal Bureau of Investigation; ( )
- b. National Crime Information Center; ( )
- c. Idaho State Police Bureau of Criminal Identification; ( )
- d. Idaho Child Protection Central Registry; ( )
- e. Idaho Adult Protection Registry; ( )
- f. Sexual Offender Registry; ( )
- g. Office of Inspector General List of Excluded Individuals and Entities; ( )
- h. Idaho Department of Transportation Driving Records; ( )
- i. Nurse Aide Registry; ( )
- j. Other states and jurisdiction records and findings. ( )

#### **002. WRITTEN INTERPRETATIONS.**

There are no written interpretations associated with this chapter of rules. ( )

#### **003. ADMINISTRATIVE APPEALS.**

**01. Appeals.** Appeals and proceedings are governed by IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” ( )

**02. Appeal of FBI Records.** If an individual believes that the records received through the FBI are incorrect, the individual has fifteen (15) days from the receipt of the denial to correct the FBI records according to 28 CFR Section 16.34 or other federal regulations. ( )

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#### 004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter of rules. ( )

#### 005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**04. Telephone.** (208) 334-5500. ( )

**05. Department Internet Website Address.** Department Internet address is: <http://www.healthandwelfare.idaho.gov>. ( )

**06. Criminal History Unit.** The Criminal History Unit may be contacted as listed below: ( )

**a.** Address: 3268 Elder Street, Boise, ID 83705; ( )

**b.** Phone: (208) 332-7990, Toll Free: 1-800-340-1246, FAX: (208) 332-7991; ( )

**c.** Website: <https://chu.dhw.idaho.gov>. ( )

#### 006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

**01. Confidential Records.** Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

**02. Federal Bureau of Investigation Records.** Any information received from the FBI must comply with 28 CFR 50.12 or other federal regulations. ( )

**03. Idaho State Police Records.** Any information received from the Idaho State Police must comply with Section 67-3008, Idaho Code. ( )

**04. Public Records Requests.** The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempt, as provided in Section 9-340, Idaho Code, and other state and federal laws and regulations, all public records in the custody of the Department of Health and Welfare are subject to disclosure. ( )

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007. -- 009. (RESERVED).

#### 010. DEFINITIONS AND ABBREVIATIONS.

**01. Application.** An individual's request for a criminal history and background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. ( )

**02. Clearance.** A clearance issued by the Department once the criminal history and background check is completed and no disqualifying crimes or relevant records are found. ( )

**03. Conviction.** An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.03.a. through 010.03.d. of this rule: ( )

**a.** When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; ( )

**b.** When there has been a finding of guilt against the individual by any federal, state, military, or local court; ( )

**c.** When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; ( )

**d.** When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes: ( )

i. When the individual has entered into participation in a drug court; or ( )

ii. When the individual has entered into participation in a mental health court. ( )

**04. Criminal History and Background Check.** A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records to determine the suitability of the individual to provide care or services to vulnerable adults or children. ( )

**05. Criminal History Unit.** The Department's Unit responsible for processing fingerprint-based criminal history and background checks, conducting exemption reviews, and issuing clearances or denials according to these rules. ( )

**06. Denial.** A denial is issued by the Department when an individual has a relevant record or disqualifying crime. There are two (2) types of denials: ( )

**a.** Conditional Denial. A denial of an applicant because of a relevant record found in Section 230 of these rules. ( )

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**b.** Unconditional Denial. A denial of an applicant because of a conviction for a disqualifying crime found in Section 210 of these rules. ( )

**07. Department.** The Idaho Department of Health and Welfare or its designee. ( )

**08. Disqualifying Crime.** A disqualifying crime is a designated crime listed in Section 210 of these rules that results in the unconditional denial of an applicant. ( )

**09. Exemption Review.** A review by the Department at the request of the applicant when a conditional denial has been issued. ( )

**10. Federal Bureau of Investigation (FBI).** The federal agency where fingerprint-based criminal history and background checks are processed. ( )

**11. Good Cause.** The facts and circumstances that would compel a reasonably prudent person to act in the same or similar manner under the same or similar circumstances. ( )

**12. Idaho State Police Bureau of Criminal Identification.** The state agency where fingerprint-based criminal history and background checks are processed. ( )

**13. Relevant Record.** A relevant record is a record that is from criminal records or from registries checked by the Department as provided in Section 56-1004A, Idaho Code, that may result in a conditional denial. ( )

**011. -- 049. (RESERVED).**

**050. FEES AND COSTS FOR CRIMINAL HISTORY AND BACKGROUND CHECKS.** The fee for a Department fingerprint-based criminal history and background check is forty-eight dollars (\$48) for an individual. The applicant is responsible for the cost of the criminal history and background check except where otherwise provided by Department rules. ( )

**051. -- 059. (RESERVED).**

### **060. EMPLOYER REGISTRATION.**

Employers required to have Department criminal history and background checks on their employees, contractors, or staff must register with the Department and receive an employer identification number before criminal history and background check applications can be processed. ( )

### **061. EMPLOYER RESPONSIBILITIES.**

The criminal history and background check clearance is not a determination of suitability for employment. The Department's criminal history and background check clearance means that an individual was found to have no disqualifying crime or relevant record. Employers are responsible for determining the individual's suitability for employment as described in Subsections 061.01 through 061.03 of these rules. ( )

**01. Screen Applicants.** The employer should screen applicants prior to initiating a criminal history and background check in determining the suitability of the applicant for



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employment. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment should be made during the initial application screening. ( )

**02. Ensure Time Frames Are Met.** The employer is responsible to ensure that the required time frames are met for completion and submission of the application and fingerprints to the Department as required in Section 150 of these rules. ( )

**03. Employment Determination.** The employer is responsible for reviewing the results of the criminal history and background check if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The employer must then make a determination as to the ability or risk of the individual to provide care or services to children or vulnerable adults. ( )

**062. -- 069. (RESERVED).**

**070. NON-COMPLIANCE WITH THESE RULES.**

The Department will report an individual's or an employer's non-compliance with these rules to the applicable licensing or certification unit. ( )

**071. -- 099. (RESERVED).**

**100. INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.**

Individuals subject to a Department criminal history and background check are those persons or classes of individuals who are required by statute, or program rules to complete a criminal history and background check. ( )

**01. Adoptive Parent Applicants.** All persons applying to the Department or petitioning the court to be an adoptive parent and all adults in the home, except stepparents applying for adoption of a stepchild, as described in IDAPA 16.06.01 "Rules Governing Family and Children's Services and IDAPA 16.06.02, "Standards for Child Care Licensing." ( )

**02. Alcohol or Drug Abuse Prevention and Treatment Programs Serving Children.** Staff who have contact with adolescents in any alcohol/drug abuse treatment program which provides treatment for persons under the age of eighteen (18) as required by IDAPA 16.06.03, "Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs," Section 020. ( )

**03. Certified Family Homes.** Certified family home providers, all adults in the home, and substitute caregivers as required in Section 39-3520, Idaho Code, and IDAPA 16.03.19, "Rules Governing Certified Family Homes," Sections 009, 101 and 300, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009. ( )

**04. Children's Residential Care Facilities.** Owners, operators, and employees of all children's residential care facilities as required in Section 39-1210, Idaho Code. ( )

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**05. Children's Therapeutic Outdoor Programs.** Staff, volunteers, and interns working in Children's Therapeutic Outdoor Programs as defined in IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," Section 810. ( )

**06. Commercial Non-Emergency Transportation Providers.** Staff of commercial non-emergency transportation providers who have contact with participants as required in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 009. ( )

**07. Developmental Disabilities Agencies.** Employees, subcontractors, agents, and volunteers, of developmental disabilities agencies as required in IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies," Section 009, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009. ( )

**08. Emergency Medical Services (EMS).** Applicants for EMS certification as required in IDAPA 16.02.03, "Rules Governing Emergency Medical Services," Section 501. ( )

**09. Home and Community-Based Services (HCBS).** Providers, employees, and contractors for home and community-based services as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009. ( )

**10. Home Health Agencies.** Employees and contractors of home health agencies as required in IDAPA 16.03.07, "Home Health Agencies," Section 009. ( )

**11. Intermediate Care Facilities for the Mentally Retarded (ICF/MR).** Employees and contractors of intermediate care facilities for the mentally retarded as required in IDAPA 16.03.11, "Intermediate Care Facilities for the Mentally Retarded (ICF/MR)," Section 009. ( )

**102. Licensed Foster Care.** All foster care applicants and other adult members of the household as required in Section 39-1211, Idaho Code, and IDAPA 16.06.02, "Standards for Child Care Licensing," Section 404. ( )

**113. Licensed Child Care.** Applicants, owners, operators, employees, volunteers, and those over twelve (12) years of age who have unsupervised direct contact with the children of day care centers, group day care facilities and family day care homes as required in Section 39-1105, Idaho Code, and IDAPA 16.06.02, "Standards for Child Care Licensing," Section 300. ( )

**124. Mental Health Clinics.** Mental health clinic's direct care staff as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009 and IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 009 and 714. ( )

**135. Personal Assistance Agencies.** Staff of personal assistance agencies acting as fiscal intermediaries as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009. ( )

**146. Personal Care Service Providers.** Providers of personal care services as required in Section 39-5604, Idaho Code, and IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," ( )

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Section 009. ( )

**17. Psychosocial Rehabilitation Providers.** Individuals providing psychosocial rehabilitation services as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 009 and 130. ( )

**18. Residential Care or Assisted Living Facilities in Idaho.** Employees and contractors of residential care or assisted living facilities as required in IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho," Section 009. ( )

**19. Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill.** Employees and contractors of semi-independent group residential care facilities for the developmentally disabled or mentally ill as required in IDAPA 16.03.15, "Semi-Independent Group Residential Care Facilities for the Developmentally Disabled or Mentally Ill," Section 009. ( )

**20. Service Coordinators and Paraprofessional Providers.** Service coordinators and paraprofessionals working for an agency as required in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 009. ( )

**21. Skilled Nursing and Intermediate Care Facilities.** Employees and contractors of skilled nursing and intermediate care facilities as required in IDAPA 16.03.02, "Skilled Nursing and Intermediate Care Facilities," Section 009. ( )

**22. Support Brokers and Community Support Workers.** Support brokers and community support workers, as required in IDAPA 16.03.13, "Self-Directed Services," Section 009. ( )

### **101. DEPARTMENT INDIVIDUALS SUBJECT TO A CRIMINAL HISTORY AND BACKGROUND CHECK.**

The following Department employees and contractors are subject to criminal history and background checks. ( )

**01. Employees and Contractors.** Employees and contractors providing direct care services or who have access to children or vulnerable adults as defined in Section 39-5302(10), Idaho Code. ( )

**02. Employees of Bureau of Audits and Investigations.** ( )

**a.** Fraud Investigators; ( )

**b.** Utilization Review Analysts; and ( )

**c.** Criminal History Staff. ( )

**03. Employees at State Institutions.** All employees of the following state funded institutions; ( )

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- a. Idaho State School and Hospital, Nampa, Idaho; ( )
- b. State Hospital North, Orofino, Idaho; and ( )
- c. State Hospital South, Blackfoot, Idaho. ( )
- 04. **Emergency Medical Services (EMS) Employees.** EMS communication specialists and managers. ( )
- 05. **Other Employees.** Other Department employees as determined by the Director. ( )

102. -- 119. (RESERVED).

### 120. APPLICATION FOR A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals who are subject to a criminal history and background check must complete an application and have it notarized. The application must include disclosure of any disqualifying crimes, offenses, or relevant records. ( )

**01. Application Form.** The applicant must request a criminal history and background check by completing the Department's application form and submitting it on-line or by mail. The individual's application authorizes the Department to obtain information and release it as required in accordance with applicable state and federal law. The following information is required to complete the application: ( )

- a. Name, current and former names, or aliases; ( )
- b. Address; ( )
- c. Date of birth, that appears on a valid identification document issued by a governmental entity, ( )
- d. State and country of birth; and ( )
- e. Driver's license number, if licensed, state where licensed, and whether a license has ever been revoked or suspended. ( )
- f. Other identifying information, including gender, race, height, weight, eye color, and hair color; ( )
- g. Employer information; ( )
- h. Any criminal record or criminal offense information; ( )
- i. Any pending charges or outstanding warrants; ( )
- j. Any child or adult protection involvement; ( )

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**k.** Any Medicare or Medicaid Provider Exclusion; and ( )

**l.** Any other information requested on the application. ( )

**02. Disclosures.** The individual must disclose any conviction, pending charges or indictment for crimes, and furnish a description of the crime and the particulars on the application. The individual must also disclose any notice by a state or local agency of substantiated child or substantiated vulnerable adult abuse, neglect, exploitation, or abandonment complaint, and any other information as required. ( )

**03. Failure to Disclose Information.** An applicant who falsifies or fails to disclose information on the application, may be subject to a conditional denial under Section 230.01 and prosecution under Sections 18-3203, 18-5401, and 56-227A, Idaho Code. ( )

**121. -- 129. (RESERVED).**

### **130. SUBMISSION OF APPLICATION.**

An application must be submitted and received by the Department before a criminal history and background check can be initiated. Once the Department has received the notarized application and signed fingerprint card, the application is pending until the Department issues a clearance or denial, or the individual withdraws the application. An application must be submitted and received by the Department within twenty-one (21) days of it being completed and notarized. ( )

**01. Submitting an Application On-Line.** An application may be submitted through the Criminal History Unit's website at <https://chu.dhw.idaho.gov>. Individuals who submit their application through the website may schedule a fingerprinting appointment at a Department location. At the fingerprinting appointment, the Department will print the application and notarize the individual's signature. ( )

**02. Submitting an Application by Mail.** An individual may complete the application provided on the Department's website, print the application, have it notarized, and mail it to the Criminal History Unit with the signed fingerprint card and applicable fee. The application must be mailed to the nearest fingerprint location as found on the Department's website or contact the Criminal History Unit as described in Section 005 of these rules. ( )

**131. -- 139. (RESERVED).**

### **140. SUBMISSION OF FINGERPRINTS.**

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. ( )

**01. Department Fingerprinting Locations.** A fingerprint appointment may be scheduled at designated Department locations where the Department will collect the individual's fingerprints. The locations are listed on the Department's website, or you may contact the Criminal History Unit as described in Section 005 of these rules. ( )

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**02. Submitting Fingerprints by Mail.** An individual may elect to have fingerprints collected by a local law enforcement agency or by the applicant's employer. The fingerprint card must be signed and mailed with the completed notarized application and applicable fee to the nearest fingerprinting location. ( )

**141. -- 149. (RESERVED).**

**150. TIME FRAME FOR SUBMITTING APPLICATION AND FINGERPRINTS.**

The completed notarized application and fingerprints must be submitted and received by the Department within twenty-one (21) days. The applicant is not available to provide services or be licensed or certified when the notarized application is not received or the fingerprints have not been rolled for an on-line application within this time frame. The criminal history and background check is incomplete and will not be processed by the Department if this time frame is not met. ( )

**151. -- 159. (RESERVED).**

**160. WITHDRAWAL OF APPLICATION.**

An individual may withdraw his application for a criminal history and background check at any time. An individual who withdraws his application cannot provide services, or receive licensure or certification. Fees paid for the cost of the criminal history and background check are non-refundable once the fingerprints have been submitted by the Department to the Idaho State Police. ( )

**161. -- 169. (RESERVED).**

**170. AVAILABILITY TO PROVIDE SERVICES PENDING COMPLETION OF THE CRIMINAL HISTORY AND BACKGROUND CHECK.**

An individual is available to provide services pending completion of the criminal history and background check as described in Subsections 170.01 and 170.02 of this rule. The application and fingerprinting must be completed in the time frame described in Section 150 of these rules. ( )

**01. Employees of Providers, Contractors, *Emergency Medical Services (EMS)*, or the Department.** An individual is available to provide services on a provisional basis at the discretion of the employer *or EMS Bureau* as long as no disqualifying crimes or relevant records are disclosed on the application. The employer must review the application for any disqualifying crimes listed in Section 210 of these rules or other relevant records listed in Section 230 of these rules. The employer then determines whether the applicant poses a health or safety risk to vulnerable clients before allowing the individual to provide services until a clearance or denial is issued by the Department. ( )

**02. Individuals Licensed or Certified by the Department.** Individuals applying for licensure or certification by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is complete and a clearance is issued by the Department. The following are individuals required to have a clearance prior to providing services: ( )

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- a. Adoption or foster care applicants and adults in the home; ( )
- b. Certification or licensure applicants; ( )
- i. Certified family homes; ( )
- ii. Licensed child care providers; ( )

**171. -- 179. (RESERVED).**

#### **180. CRIMINAL HISTORY AND BACKGROUND CHECK RESULTS.**

The Department will issue a clearance or denial once the criminal history and background check is completed. The results may be accessed by the individual on the Department's website. The employer may access the information that is provided by the applicant and information obtained from the state, county, or through registries. ( )

#### **181. APPLICATION STATUS.**

An individual and his employer may check on the criminal history and background check status and the individual's availability to work on the Department website: <https://chu.dhw.idaho.gov>. ( )

**182. -- 189. (RESERVED).**

#### **190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.**

A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual or his employer may print copies of the clearance. ( )

**191. -- 199. (RESERVED).**

#### **200. UNCONDITIONAL DENIAL.**

An individual who receives an unconditional denial is not available to provide services, *have access*, or to be licensed or certified by the Department. ( )

**01. Reasons for an Unconditional Denial Issuance.** Unconditional denials are issued for disqualifying crimes described in Section 210 of these rules. ( )

**02. Issuance of an Unconditional Denial.** *The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check.* ( )

**03. Challenge of Department's Unconditional Denial.** *An individual has thirty (30) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with: The Criminal History Unit, 3268 Elder Street, Boise, ID 83705.*

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( )

*a. If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152.* ( )

*b. If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152.* ( )

**04. No Exemption Review.** No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. ( )

**025. Final Order.** The Department's final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152, may be appealed in District Court. ( )

**201. -- 209. (RESERVED).**

### **210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.**

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. ( )

**01. Disqualifying Crimes.** The disqualifying crimes described in Subsections 210.01.a through 210.01.v. of these rules will result in an unconditional denial being issued. ( )

**a.** Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; ( )

**b.** Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; ( )

**c.** Crimes against nature, as defined in Section 18-6605, Idaho Code; ( )

**d.** Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; ( )

**e.** Incest, as defined in Section 18-6602, Idaho Code; ( )

**f.** Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; ( )

**g.** Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; ( )



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- h.** Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; ( )
- i.** Mayhem, as defined in Section 18-5001, Idaho Code; ( )
- j.** Murder in any degree, voluntary manslaughter, assault, or battery with intent to commit a serious felony, as defined in Sections 18-4001, 18-4003, 18-4006, and 18-4015, Idaho Code; ( )
- k.** Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; ( )
- l.** Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; ( )
- m.** Rape, as defined in Section 18-6101, Idaho Code; ( )
- n.** Robbery, as defined in Section 18-6501, Idaho Code; ( )
- o.** Felony stalking, as defined in Section 18-7905, Idaho Code; ( )
- p.** Sale or barter of a child, as defined in Section 18-1511, Idaho Code; ( )
- q.** Sexual abuse or exploitation of a child, as defined in Sections 18-1506 and 18-1507, Idaho Code; ( )
- r.** Video voyeurism, as defined in Section 18-6609, Idaho Code; ( )
- s.** Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; ( )
- t.** Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; ( )
- u.** Any felony punishable by death or life imprisonment; or ( )
- v.** Attempt, conspiracy, or accessory after the fact, as defined in Sections 18-205, 18-306, and 18-1701, Idaho Code, to commit any of the disqualifying designated crimes. ( )

**02. Disqualifying Five-Year Crimes.** The Department will issue an unconditional denial for an individual who has been convicted of the following crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.l. of this rule: ( )

- a.** Aggravated assault, as defined in Section 18-905, Idaho Code; ( )
- b.** Aggravated battery, as defined in Section 18-907(1), Idaho Code; ( )
- c.** Arson in the third degree, as defined in Section 18-804, Idaho Code; ( )

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- d. Burglary, as defined in Section 18-1401, Idaho Code; ( )
  - e. A felony involving a controlled substance; ( )
  - f. Felony theft, as defined in Section 18-2403, Idaho Code; ( )
  - g. Forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 and 18-3124, Idaho Code; ( )
  - h. Forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; ( )
  - i. Grand theft, as defined in Section 18-2407(1), Idaho Code; ( )
  - j. Insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; ( )
  - k. Public assistance fraud, as defined in Sections 56-227 and 56-227A, Idaho Code; ( )
- or
- l. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, and 18-1701, Idaho Code, to commit any of the disqualifying five (5) year crimes. ( )

**03. Underlying Facts and Circumstances.** *The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following:* ( )

- a. A withheld judgment; ( )
  - b. A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; ( )
  - c. An order according to Section 19-2604, Idaho Code, or other equivalent state law; ( )
- or
- d. A sealed record, ( )

**211. -- 219. (RESERVED).**

### **220. CONDITIONAL DENIAL.**

The Department may issue a conditional denial within fourteen (14) days of the completion of a criminal history and background check. An individual who receives a conditional denial is not available to provide services or be licensed or certified by the Department. ( )

**01. Reasons for a Conditional Denial Issuance.** A conditional denial is issued when the criminal history and background check reveals a relevant record as described in Section 230

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of these rules. ( )

**02. Effective Date of a Conditional Denial.** A conditional denial is effective immediately. An applicant may not reapply for a criminal history and background check for three (3) years from the date of the conditional denial. ( )

**03. Request an Exemption Review.** An individual may request an exemption review as described in Section 250 of these rules when a conditional denial has been issued. ( )

**221. -- 229. (RESERVED).**

### **230. RELEVANT RECORDS RESULTING IN A CONDITIONAL DENIAL.**

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a relevant record on his record as described Subsections 230.01 and 230.02 of this rule. ( )

**01. Individuals Licensed or Certified by the Department or a Department Employee.** A conditional denial may be issued when an individual who is licensed or certified by the Department, or who is a Department employee discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.01.a. through 230.01.f. of this rule: ( )

**a.** A plea, finding, or adjudication of guilt to any felony or misdemeanor, or any crime other than a traffic violation, that does not result in a suspension of the individual's driver's license; ( )

**b.** A substantiated child protection complaint or a substantiated adult protection complaint; ( )

**c.** The Department determines there is a potential health and safety risk to vulnerable adults or children; ( )

**d.** The individual has falsified or omitted information on the application form; ( )

**e.** The individual is listed with a finding on the Nurse Aide Registry; or ( )

**f.** The Department determines additional information is required. ( )

**02. Employees of Providers or Contractors.** A conditional denial may be issued when an individual who is employed by a provider or contractor discloses, or the criminal history and background check reveals, a relevant record as defined in Subsections 230.02.a. through 230.01.c. of this rule. ( )

**a.** A substantiated child protection complaint or a substantiated adult protection complaint; ( )

**b.** The individual is listed with a finding on the Nurse Aide Registry; or ( )

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- c. The Department determines additional information is required. ( )

**03. Underlying Facts and Circumstances.** *The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following:* ( )

- a. *A withheld judgment;* ( )

b. *A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required;* ( )

c. *An order according to Section 19-2604, Idaho Code, or other equivalent state law;*  
or ( )

- d. *A sealed record,* ( )

**231. -- 239. (RESERVED).**

**240. MEDICAID EXCLUSION.**

Individuals subject to these rules, who are excluded by the Office of Inspector General, cannot provide Department funded services within the scope of these rules. At the expiration of the exclusion, the individual may reapply for a criminal history and background check. ( )

**241. -- 249. (RESERVED).**

**250. EXEMPTION REVIEWS.**

An individual cannot request an exemption review for an unconditional denial. An individual may request an exemption review within fourteen (14) days from the date of the issuance of a conditional denial by the Department, unless good cause is shown for a delay. Once the Department receives the request for an exemption review, the Department will initiate a review for crimes or actions not designated in Section 210 of these rules. The review may consist of examining documents and supplemental information provided by the individual, a telephone interview, an in-person interview, or any other review the Department determines is necessary. Exemption reviews are governed and conducted as provided in Subsections 250.01 through 250.05 of this rule. ( )

**01. Scheduling an Exemption Review.** Upon receipt of a request for an exemption review, the Department will determine the type of review and conduct the review within thirty (30) days from the date of the request. Where an in-person review is appropriate, the Department will provide the individual at least seven (7) days notice of the review date unless the time is waived by the individual. When an in-person review is scheduled, the individual is notified by the Department that he is able to bring witnesses and present evidence during the review. ( )

**02. Factors Considered at the Exemption Review.** The Department will consider the following factors or evidence during the exemption review: ( )

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- a. The severity or nature of the crime or other findings; ( )
- b. The period of time since the incident under review occurred; ( )
- c. The number and pattern of incidents; ( )
- d. Circumstances surrounding the incident that would help determine the risk of repetition; ( )
- e. Relationship of the incident to the care of children or vulnerable adults; ( )
- f. Activities since the incident, such as continuous employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of rehabilitation; ( )
- g. Granting of a pardon by the Governor or the President; and ( )
- h. The falsification or omission of information on the application form and other supplemental forms submitted. ( )

**03. Exemption Review Determination.** The Department determines the individual's suitability based upon the information provided during the exemption review. The Department will issue a notice of decision within fifteen (15) business days of the close of the review. ( )

**04. Exemption Review Decision Effective Dates.** The Department's exemption review decision is effective for three (3) years from the date of the notice of decision. ( )

**05. Exemption Review Appeal.** Exemption reviews conducted under this section of rule may be appealed under IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings." The filing of a notice of appeal does not stay the action of the Department. The individual who files an appeal must establish that the Department's denial was arbitrary and capricious. ( )

**251. -- 259. (RESERVED).**

**260. PREVIOUS EXEMPTION REVIEW DENIALS.**

The individual's current request for a criminal history and background check for any Department program when there has been a denial from an exemption review within the last three (3) years will automatically be denied. ( )

**261. -- 269. (RESERVED).**

**270. CRIMINAL ACTION PENDING.**

When the applicant is identified as having a pending criminal action for a crime that may disqualify him from receiving a clearance for the criminal history and background check, the Department may issue a notice of inability to proceed. The applicant is not available to provide service when a notice of inability to proceed is issued by the Department. The applicant can

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submit documentation that the matter has been resolved to the Department for reconsideration. When the Department receives this documentation, the Department will notify the applicant of the reconsideration and issue a clearance or denial. ( )

**271. -- 299. (RESERVED).**

### **300. UPDATING CRIMINAL HISTORY AND BACKGROUND CHECKS.**

The employer is responsible for confirming that the applicant has completed a criminal history and background check. ( )

**01. New Criminal History and Background Check.** Any individual required to have a criminal history and background check under these rules must complete a new application, including fingerprints when: ( )

- a.** Accepting employment with a new employer; or ( )
- b.** Applying for licensure or certification with the Department; and ( )
- c.** His last Department criminal history and background check was completed more than three (3) years prior to his employment date or licensure application date. ( )

**02. Use of Criminal History Check Within Three Years of Completion.** Any employer may use a Department criminal history and background check clearance obtained under these rules if: ( )

- a.** The individual has received a Department's criminal history and background check clearance within three (3) years from the date of employment; and ( )
- b.** The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal identification, and no disqualifying crimes are found. ( )

**03. Employer Discretion.** The new employer, at its discretion, may require an individual to complete a Department criminal history and background check at any time, even if the individual has received a criminal history and background check clearance within three (3) years. ( )

**04. Department Discretion.** The Department may, at its discretion or as provided in program rules, require a criminal history and background check of any individual covered under these rules at any time during the individual's employment, internship, or while volunteering. Any individual required to complete a criminal history and background check under Sections 100 and 101 of these rules, must be fingerprinted within fourteen (14) days from the date of notification by the Department that a new criminal history and background check is required. ( )

**301. -- 349. (RESERVED).**

### **350. CRIMINAL HISTORY AND BACKGROUND CHECK RECORDS.**

Criminal history and background checks done under this chapter become the property of the

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Department and are held confidential. ( )

**01. Release of Criminal History and Background Check Records.** A copy of the criminal history and background check as defined in Section 010 of these rules will be released: ( )

**a.** To the individual who has requested the criminal history and background check and upon receipt of a written request to the Department, provided the individual releases the state from all liability; ( )

**b.** In response to a subpoena issued by a court of competent jurisdiction; or ( )

**c.** As otherwise required by law. ( )

**02. Retention of Records.** ( )

**a.** If an exemption is granted, the criminal history and background record, supplemental documentation received, notes from the review, and the decision will be retained by the Department for a period of at least five (5) years after the criminal history and background check is completed. ( )

**b.** If an exemption is denied, the Department retains all records and electronic recordings pertaining to the review for five (5) years after the criminal history and background check is completed. ( )

**03. Use and Dissemination Restrictions for FBI Criminal Identification Records.** According to the provisions under 28 CFR 50.12, the Department will: ( )

**a.** Notify the individual fingerprinted that the fingerprints will be used to check the criminal history records of the FBI; ( )

**b.** In determining the suitability for licensing or employment, provide the individual the opportunity to complete or challenge the accuracy of the information contained in the FBI identification record; ( )

**c.** Notify the individual that he has fifteen (15) days to correct or complete the FBI identification record or to decline to do so; and ( )

**d.** Advise the individual who wishes to correct the FBI identification record that procedures for changing, correcting, or updating are provided in 28 CFR 16.34. ( )

**351. -- 999. (RESERVED).**

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)**

##### **DOCKET NO. 16-0612-0702 (FEE RULE)**

##### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2007, Idaho Administrative Bulletin, Vol. 07-10, pages 495 through 497.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 56-202, Idaho Code.

This rulemaking imposes an increase in the co-payment for child care for non-working students requiring them to pay a 31% co-payment that is equal to or less than the average co-payment paid by working students.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact to the state general fund; however, there will be decreased costs to the federal Child Care Development Fund Block Grant.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Genie Sue Weppner or Cheryl Bowers at (208) 334-5815.

DATED this 5th day of November, 2007.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor

P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 334-6558 fax  
kovachs@dhw.idaho.gov e-mail



## **HEALTH AND WELFARE COMMITTEE**

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Rules Governing the Idaho Child Care Program**

**Docket No. 16-0612-0702**  
**PENDING FEE RULE**

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### ***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule making:

**This rule change will incorporate recommendations obtained from the Office of Performance Evaluation (OPE), legislative auditors, higher education stakeholders, advocacy group stakeholders, House and Senate Health and Welfare Committees, and the Idaho Childcare Advisory Panel to:**

- 1. Require non-working students to pay a 31% co-pay; and**
- 2. Require Idaho Child Care Program (ICCP) applicants to cooperate with child support**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

**This rulemaking imposes an increase in the co-payment for child care for non-working students requiring them to pay a 31% co-payment that is equal to or less than the average co-payment paid by working students.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

There is no fiscal impact to the state general fund; however, there will be decreased costs to the federal Child Care Development Fund Block Grant.

**NEGOTIATED RULEMAKING:** Several negotiated rulemaking meetings were conducted in 2007 in Boise with a committee appointed by the 2007 Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Genie Sue Weppner or Cheryl Bowers at (208) 334-5815.

## HEALTH AND WELFARE COMMITTEE

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### DEPARTMENT OF HEALTH AND WELFARE Rules Governing the Idaho Child Care Program

Docket No. 16-0612-0702  
PENDING FEE RULE

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Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 24, 2007.

DATED this 22nd day of August, 2007.

### THE FOLLOWING IS THE TEXT OF THE PENDING RULE

#### 103. ~~(RESERVED)~~ COOPERATION IN ESTABLISHMENT OF PATERNITY AND OBTAINING SUPPORT.

If a minor child has a non-custodial parent, the biological or adoptive parent, or other individual who lives with the child and exercises parental control, must cooperate in establishing paternity for the child and obtaining child support. ( )

**01. Providing All Information.** “Cooperation” includes providing all information to identify and locate the non-custodial parent. At a minimum, the first and last name of the non-custodial parent and at least two (2) of the following pieces of information must be provided. ( )

**a.** Birth date; ( )

**b.** Social Security Number; ( )

**c.** Current address; ( )

**d.** Current phone number; ( )

**e.** Current employer; ( )

**f.** Make, model, and license number of any motor vehicle owned by the non-custodial parent; and ( )

**g.** Name, phone numbers and addresses of the parents of the non-custodial parent. ( )

**02. Established Case for Custodial Parent.** After Child Support Services (CSS) has established a case for a custodial parent, all child support payments must be sent directly to CSS. If the custodial parent receives child support directly from the non-custodial parent, the custodial parent must forward the payment to CSS for receipting. ( )

**03. Failure to Cooperate.** ( )

## HEALTH AND WELFARE COMMITTEE

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### DEPARTMENT OF HEALTH AND WELFARE Rules Governing the Idaho Child Care Program

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PENDING FEE RULE

a. Failure to cooperate includes failure to complete the non-custodial or alleged parent information or filiation affidavit as requested, failure to sign the limited power of attorney, or evidence of failure to cooperate provided by CSS. ( )

b. When a parent or individual fails to cooperate in establishing paternity and obtaining support, the family is not eligible to participate in the Idaho Child Care Program. ( )

**04. Exemptions From Cooperation Requirement.** The parent or individual will not be required to provide information about the non-custodial or alleged parent or otherwise cooperate in establishing paternity or obtaining support if good cause for not cooperating exists. Good cause for failure to cooperate must be provided. ( )

a. Good cause for failure to cooperate in obtaining support is: ( )

i. Proof the child was conceived as a result of incest or forcible rape; ( )

ii. Proof the non-custodial parent may inflict physical or emotional harm to the children, the custodial parent or individual exercising parental control. This must be supported by medical evidence, police reports, or as a last resort, an affidavit from a knowledgeable source; and ( )

iii. Substantial and credible proof is provided indicating the custodial parent cannot provide the minimum information regarding the non-custodial parent. ( )

b. A parent or individual claiming good cause for failure to cooperate must submit a notarized statement to the Department identifying the child for whom the exemption is claimed. The statement must list the reasons for the good cause claim. ( )

c. The cooperation requirement will be waived if good cause exists. No further action will be taken to establish paternity or obtain support. If good cause does not exist the parent will be notified that he is not eligible to receive Idaho Child Care program benefits, until child support cooperation as been obtained. ( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### **503. ~~(RESERVED)~~ NON-WORKING STUDENT CO-PAYMENT REQUIREMENTS.**

A post-secondary student who does not work will be required to pay a thirty-one percent (31%) co-payment. A post-secondary student who works at least ten (10) hours per week will have a co-payment based on his total family income. A student who is finishing high school, taking English as a second language or GED courses will be excluded from the requirement to pay a thirty-one percent (31%) co-payment and will instead have a co-payment based only on his income. ( )

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 19 - STATE BOARD OF DENTISTRY**

#### **19.01.01 - RULES OF THE STATE BOARD OF DENTISTRY**

##### **DOCKET NO. 19-0101-0701 (FEE RULE)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-912, 54-916 and 54-920, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. No changes.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 35 and 36.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased.

This fee or charge is being imposed pursuant to Section 54-916, Idaho Code. 1. The proposed rule will increase the licensure application fee for the following: Dentists licenses by exam, fee increases from \$100 to \$300; Dental Hygienists licensed by exam from \$50 to \$150. 2. The following is a specific description of the fee or charged imposed or increased. This fee or charge is being imposed pursuant to section, 54-920, Idaho Code. 3. The proposed rule will increase the biennial licensure fee for the following: Dentist Active Status; license increases from \$300 to \$375; Dentist Inactive status license increases from \$150 to \$160; Dental Hygienist Active Status license increases from \$140 to \$175; Dental Hygienist license inactive status increases from \$80 to \$85.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Arthur R. Sacks, 208-334-2369.

DATED this 30<sup>th</sup> day of October, 2007.

## **HEALTH AND WELFARE COMMITTEE**

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**STATE BOARD OF DENTISTRY**  
**Rules of the State Board of Dentistry**

**Docket No. 19-0101-0701**  
**PENDING FEE RULE**

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Arthur R. Sacks  
Executive Director  
Idaho State Board of Dentistry  
350 North 9<sup>th</sup> Street, Boise, ID 83702  
P.O. Box 83720  
Boise, ID 83720-0021  
Phone: 208-334-2369  
Fax: 208-334-3247

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-912, 54-916, and 54-920, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

**October 17, 2007 - 10:00 am**  
**Office of the Idaho Board of Dentistry**  
**350 North 9<sup>th</sup> Street, Suite M-100, Boise, ID**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**The proposed rule changes increase the fees for the application for licensure of dentists and dental hygienists. They also increase the biennial license fees of dentists and dental hygienists.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

**The proposed rule will increase the licensure application fee for the following: Dentists licenses by exam, fee increases from \$100 to \$300; Dental Hygienists licensed by exam from \$50 to \$150. These are authorized by 54-916, Idaho Code.**

**The proposed rule will increase the biennial licensure fee for the following: Dentist Active Status license increases from \$300 to \$375; Dentist inactive status license increases from \$150 to \$160; Dental Hygienist Active Status license increases from \$140 to \$175; Dental Hygienist license inactive status increases from \$80 to \$85. These are authorized by 54-920, Idaho Code.**

## HEALTH AND WELFARE COMMITTEE

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### STATE BOARD OF DENTISTRY Rules of the State Board of Dentistry

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Docket No. 19-0101-0701  
PENDING FEE RULE

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the relatively simple nature of the rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Arthur R. Sacks, 208-334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 24th day of August, 2007.

### ***THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE***

#### **012. LICENSE AND APPLICATION FEES (RULE 12).**

The license fees and application fees shall be as follows: (3-30-07)

##### **01. Application Fees for Dentists:** (7-1-91)

##### **a. General:** (3-18-99)

i. By examination -- ~~one~~ three hundred dollars (\$~~1~~300). (~~3-18-99~~)(    )

ii. By credentials -- six hundred dollars (\$600). (3-18-99)

##### **b. Specialty:** (7-1-91)

i. By examination -- ~~one~~ three hundred dollars (\$~~1~~300). (~~7-1-91~~)(    )

ii. By credentials -- six hundred dollars (\$600). (3-18-99)

##### **02. Application Fees for Dental Hygienists:** (7-1-91)

**a.** By examination -- one hundred fifty dollars (\$150). (~~7-1-91~~)(    )

**b.** By credentials -- one hundred ~~and~~ fifty dollars (\$150). (~~7-1-92~~)(    )

## HEALTH AND WELFARE COMMITTEE

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**STATE BOARD OF DENTISTRY**  
**Rules of the State Board of Dentistry****Docket No. 19-0101-0701**  
**PENDING FEE RULE**

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- 03. Biennial License Fees for Dentists:** (3-30-07)
- a.** Active -- three hundred seventy-five dollars (\$~~300~~75). (~~3-30-07~~)(    )
- b.** Inactive -- one hundred ~~and fifty~~ sixty dollars (\$~~150~~60). (~~3-30-07~~)(    )
- c.** Specialty -- three hundred seventy-five dollars (\$~~300~~75). (~~3-30-07~~)(    )
- 04. Biennial License Fees for Hygienists:** (3-30-07)
- a.** Active -- one hundred ~~and forty~~ seventy-five dollars (\$~~140~~75). (~~3-30-07~~)(    )
- b.** Inactive -- eighty-five dollars (\$~~80~~5). (~~3-30-07~~)(    )
- 05. Application Fees for General Anesthesia and Conscious Sedation Permits:** (4-2-03)
- a.** Initial Application -- three hundred dollars (\$300). (4-2-03)
- b.** Renewal Application -- three hundred dollars (\$300). (4-2-03)
- c.** Reinstatement Application -- three hundred dollars (\$300). (4-2-03)

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 22 - IDAHO STATE BOARD OF MEDICINE**

#### **22.01.01 - RULES OF THE BOARD OF MEDICINE FOR THE LICENSURE TO PRACTICE MEDICINE AND SURGERY AND OSTEOPATHIC MEDICINE AND SURGERY IN IDAHO**

**DOCKET NO. 22-0101-0701 (FEE RULE)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-1806(2)(4) and (11) and 54-1806A, 54-1812, 54-1813, 54-1814 and 54-1841, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**There are no changes in the pending rule. The proposed rule changes amend existing language relating to the graduates of U.S., Canadian and international medical schools; clarify post-graduate medical training requirements; augment international medical school requirements; include definitions; require lawful presence in the U.S.; broaden the fee schedules and to update and clarify rules.**

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 71 through 81.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

**The fee schedule has been broadened, however, there will be no increase in fees. This fee or charge is being imposed pursuant to Sections 54-1806 (11), 54-1808 and 54-1813, Idaho Code.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.



## HEALTH AND WELFARE COMMITTEE

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**STATE BOARD OF MEDICINE**  
**Licensure to Practice Medicine and Surgery**

**Docket No. 22-0101-0701**  
**PENDING FEE RULE**

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DATED this 24th day of October, 2007.

Nancy M. Kerr, Executive Director  
Idaho State Board of Medicine  
1755 Westgate Drive, Ste. 140  
PO Box 83720 Boise, ID 83720-0058  
Phone: (208) 327-7000 Fax: (208) 327-7005

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1806 (2) (4) and (11) and 54-1806A, 54-1812, 54-1813, 54-1814 and 54-1841, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**These proposed changes amend existing language relating to the graduates of U.S., Canadian and international medical schools; clarify post-graduate medical training requirements; augment international medical school requirements; include definitions; require lawful presence in the U.S.; broaden the fee schedules and to update and clarify rules.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

**The fee schedule has been broadened, however, there will be no increase in fees. Authority for imposition of these fees is found in Sections 54-1806 (11), 54-1808 and 54-1813, Idaho Code.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was

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### STATE BOARD OF MEDICINE Licensure to Practice Medicine and Surgery

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not conducted, however, the Board received input and comments regarding the licensure of qualified well-trained graduates of international medical schools, particularly given the shortage of physicians, from legislators, international medical school graduates, physicians and the public.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this August 21, 2007.

### *THE FOLLOWING IS THE TEXT OF THE PENDING RULE*

#### **000. LEGAL AUTHORITY.**

Pursuant to Sections 54-1806(2), ~~54-1806(4), 54-1806(11), and Section~~ 54-1806A, ~~54-1812, 54-1813, 54-1814 and 54-1841,~~ Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to govern the practice of Medicine in Idaho. ~~(3-30-01)~~(\_\_\_\_)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **005. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into ~~this~~ these rules. ~~(5-3-03)~~(\_\_\_\_)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **008. SEVERABILITY.**

The sections and subsections of these rules are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (\_\_\_\_)

~~008.~~—**009. (RESERVED).**

#### **010. DEFINITIONS.**

**031. Acceptable School of Medicine.** A medical school or college of osteopathic medicine located within the United States ~~or Canada and designated as an approved medical~~

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~~school by the Liaison Committee on Medical Education, or a school of osteopathy located within the United States and designated as an approved school of osteopathy by the American Osteopathic Association, or a medical school acceptable to the Board~~ accredited by the Liaison Committee on Medical Education (LCME), Joint Committee of the Association of American Medical Colleges (AAMC) and the American Medical Association (AMA) or the American Osteopathic Association (AOA). A medical school or college of osteopathic medicine located within Canada accredited by the Liaison Committee on Medical Education (LCME) and by the Committee on Accreditation for Canadian Medical Schools, as sponsored by the Canadian Medical Association and Association of Canadian Medical Colleges or the American Osteopathic Association (AOA). (7-1-93)( )

**02. Acceptable International School of Medicine.** An international medical school located outside the United States or Canada which meets the standards for medical educational facilities set forth in Subsection 051.02, is accredited by the Educational Commission for Foreign Medical Graduates (ECFMG) and provides the scope and content of the education and coursework that are equivalent to acceptable schools of medicine located within the United States or Canada. ( )

**03. Accreditation Council for Graduate Medical Education (ACGME).** A nationally recognized accrediting authority responsible for accreditation of post-Medical Doctor medical training programs within the United States. ( )

**054. Applicant.** Any human person seeking a license to practice medicine from the Board. (7-1-93)( )

**045. Board.** The Idaho State Board of Medicine. (7-1-93)

**06. Educational Commission for Foreign Medical Graduates (ECFMG).** A nationally recognized non-profit organization that certifies international medical graduates who seek to enter United States residency and fellowship programs and conducts the Clinical Skills Assessment (CSA). ( )

**07. Federation of State Medical Boards of the United States (FSMB).** A nationally recognized non-profit organization representing the seventy (70) medical boards of the United States and its territories. ( )

**08. Liaison Committee on Medical Education (LCME).** An internationally recognized accrediting authority, sponsored by the Association of American Medical Colleges and the American Medical Association, for medical education programs leading to a Medical Doctor (MD) degree in United States and Canadian medical schools. ( )

**0409. License to Practice Medicine.** A license issued by the Board to practice medicine and surgery or a license to practice osteopathic medicine and surgery in Idaho. (3-30-06)

**0210. Medical Practice Act.** Title 54, Chapter 18, Idaho Code. (3-30-06)

**0611. Original Certificate or Document.** ~~Shall mean either~~ The original document itself or a certified copy thereof issued by the agency or institution and mailed or delivered

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directly from the source to the Board or a Board approved credential verification service.

(~~3-30-06~~)( )

#### **011. ABBREVIATIONS.**

- |                   |  |     |
|-------------------|--|-----|
| <b><u>01.</u></b> | <b><u>AAMC.</u></b> Association of American Medical Colleges.              | ( ) |
| <b><u>02.</u></b> | <b><u>ACGME.</u></b> Accreditation Council for Graduate Medical Education. | ( ) |
| <b><u>03.</u></b> | <b><u>AMA.</u></b> American Medical Association.                           | ( ) |
| <b><u>04.</u></b> | <b><u>AOA.</u></b> American Osteopathic Association.                       | ( ) |
| <b><u>05.</u></b> | <b><u>ECFMG.</u></b> Educational Commission for Foreign Medical Graduates. | ( ) |
| <b><u>06.</u></b> | <b><u>FSMB.</u></b> Federation of State Medical Boards.                    | ( ) |
| <b><u>07.</u></b> | <b><u>LCME.</u></b> Liaison Committee on Medical Education.                | ( ) |
| <b><u>08.</u></b> | <b><u>USMLE.</u></b> United States Medical Licensing Exam.                 | ( ) |

~~0142.~~ -- 049. (RESERVED).

#### **050. GENERAL QUALIFICATIONS FOR LICENSURE AND RENEWAL.**

**01. Residence.** No period of residence in Idaho shall be required of any applicant, however, each applicant for licensure must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request only. The Board shall refuse licensure or renew a license if the applicant is not lawfully present in the United States. (~~7-1-93~~)( )

**02. Character.** The Board may refuse licensure if it finds that the applicant has engaged in conduct prohibited by Section 54-1814, Idaho Code; provided the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. (7-1-93)

**03. English Language.** Each applicant shall speak, write, read, understand and be understood in the English language. Evidence of proficiency in the English language must be provided upon request only. ( )

**034. Application.** Each applicant must have graduated from an acceptable school of medicine, passed an examination acceptable to the Board that demonstrates qualification for licensure or successfully completed all three (3) steps of the United States Medical Licensing Exam (USMLE) and completed one (1) year of postgraduate training approved by the ~~Accreditation Council for on Graduate Medical Education, the American Osteopathic Association~~ ACGME, AOA or Royal College of Physicians and Surgeons of Canada ~~or the Board,~~ and shall submit a completed written application to the Board on forms prescribed by the Board, ~~together~~ with the nonrefundable application fee. Any certificate or document required to be submitted to the Board which is not in the English language must be accompanied by a

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certified translation thereof into English. The application form shall be verified and shall require the following: ~~(3-30-06)~~( )

a. ~~The~~ Personal identification information and education background of the applicant including, but limited to, his college education, medical school education and postgraduate training; ~~(7-1-93)~~( )

b. An original certificate or document of graduation from an acceptable school of medicine, and evidence of satisfactory completion of postgraduate training of one (1) year at one (1) training program accredited for internship, residency or fellowship training by the ACGME, AOA or Royal College of Physicians and Surgeons of Canada; ~~(7-1-93)~~( )

c. The disclosure of any criminal charges, convictions or guilty pleas against the applicant other than minor traffic offenses; (7-1-93)

d. The current mental and physical condition of the applicant, together with disclosure of any previous physical or mental illness which impacts the applicant's ability to practice medicine; (3-30-01)

e. The disclosure of any past or pending medical malpractice actions against the applicant, and the settlements, if any, of such claims; (7-1-93)

f. The disclosure of any disciplinary action by any ~~state~~ board of medicine, licensing authority, medical society, professional society, hospital, medical school, or institution staff in any state or country; ~~(7-1-93)~~( )

g. The disclosure of the refusal to issue or renew a license to practice medicine by any state, Canadian or ~~foreign~~ international licensing authority; ~~(3-30-06)~~( )

h. References to include two (2) letters of recommendation signed by licensed physicians who have known the applicant professionally for at least one (1) year; (3-30-06)

i. An unmounted photograph of the applicant, of adequate size and clarity to identify the applicant and no larger than four inches tall by three inches wide (4" x 3"), taken not more than one (1) year prior to the date of the application; (3-30-06)

j. A certified copy of a full set of the applicant's fingerprints on forms supplied by the Board which shall be forwarded to the Idaho Department of Law Enforcement and to the FBI Identification Division for the purpose of a fingerprint-based criminal history check of the Idaho central criminal database and the Federal Bureau of Investigation criminal history database; (5-3-03)

k. The employment history and relevant practice locations of the applicant; (3-30-06)

l. Each state, country and jurisdiction in which the applicant has applied for a license to practice medicine; ~~(3-30-06)~~( )

m. Each state, country and jurisdiction wherein the applicant is licensed to practice

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medicine; and

(3-30-06)( )

n. Such other information or examinations as the Board deems necessary to identify and evaluate the applicant's credentials and competency. (3-30-06)

**045. Examination.** Each applicant must pass an examination acceptable to the Board, within the time period recommended by the examination authority, which shall thoroughly test the applicant's fitness to practice medicine or successfully completed all three (3) steps of the United States Medical Licensing Exam (USMLE). If an applicant fails to pass the examination on two (2) separate occasions the applicant may be required to be interviewed, evaluated or examined by the Board. (3-30-06)( )

**056. Interview.** Each applicant may be personally interviewed by the Board or a designated committee of the Board. The interview shall include a review of the applicant's qualifications and professional credentials. (3-30-01)

**067. Applicants.** All applicants must complete their license application within one (1) year unless extended by the Board after filing an application for extension. Unless extended, applications that remain on file for more than one (1) year will be considered null and void and a new application and new fees will be required as if filing for the first time. (3-30-06)

**078. Health Care Standards.** In reviewing the application or conducting the applicant's interview, the Board shall determine whether the applicant possesses the requisite qualifications to provide the same standard of health care as provided by licensed physicians in this state. If the Board is unable to reach such a conclusion through the application and interview, it shall conduct further inquiry, to establish such qualifications. (3-30-06)

a. Upon inquiry, if further examination is required, the Board may require passage of the Special Purpose Examination (SPEX) administered by the ~~Federation of State Medical Boards of the United States (FSMB)~~, a post licensure assessment conducted by the ~~Federation of State Medical Boards FSMB~~, or a evaluation by an independent agency ~~approved~~ accepted by the Board to evaluate physician competence; (3-30-06)( )

b. The Board will require further inquiry when in its judgment the need is apparent, including but not limited to the following circumstances: (3-30-06)

i. Graduate of a ~~foreign~~ international medical school located outside the United States and Canada and not accredited by the ~~Liaison Committee on Medical Education~~ LCME; (3-30-06)( )

ii. Applicant whose background investigation reveals evidence of impairment, competency deficit, or disciplinary action by ~~another~~ any licensing or regulatory agency; (3-30-06)( )

iii. An applicant has not been in active medical practice for a period exceeding one (1) year, or when practice has been significantly interrupted; (3-30-06)

iv. An applicant has not written a recognized examination intended to determine

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ability to practice medicine within a period of five (5) years preceding application; (3-30-06)

v. An applicant whose initial licensure was issued on the basis of an examination not recognized by the Board; or (3-30-06)

vi. When there is any reason whatsoever to question the identity of the applicant. (3-30-06)

c. Recommendations of the assessment and or evaluation acceptable to the Board related to the ability of the applicant to practice medicine and surgery will be considered by the Board in its decision whether to issue a license and the Board may limit, condition, or restrict a license based on the Board's determination and the recommendation of the assessment or evaluation. (3-30-06)

### 051. LICENSURE FOR GRADUATES OF INTERNATIONAL MEDICAL SCHOOLS LOCATED OUTSIDE OF THE UNITED STATES AND CANADA.

01. ~~Foreign~~ International Medical Graduate. In addition to meeting the requirements of Section 050, graduates of international medical schools located outside of the United States and Canada must submit to the Board: (~~3-30-06~~)( )

a. ~~An~~ ~~Original certificate from the Educational Commission for Foreign Medical Graduates (ECFMG) or must submit original documentation that the applicant has passed the examination either administered or recognized by the Educational Commission for Foreign Medical Graduates; ECFMG and IDAPA 22.01.01 passed an examination acceptable to the Board that demonstrates qualification for licensure or successfully completed all three (3) steps of the United States Medical Licensing Exam (USMLE).~~ (~~3-30-06~~)( )

b. ~~Evidence~~ Original documentation directly from the ~~foreign~~ international medical school which establishes to the satisfaction of the Board that the ~~foreign~~ international medical school meets the standards for medical educational facilities set forth in Subsection 051.02; and that both the scope and content of the applicant's coursework and performance were equivalent to those required of students of medical schools accredited by the LCME; (~~3-30-06~~)( )

c. ~~An Affidavit~~ Original documentation directly from the ~~foreign~~ international medical school that it has not been disapproved or has its authorization, accreditation, certification or approval denied or removed by any state, country or territorial jurisdiction and that to its knowledge no state of the United States or any country or territorial jurisdiction has refused to license its graduates on the grounds that the school fails to meet reasonable standards for medical education facilities; (~~7-1-93~~)( )

d. A complete and original transcript from the international medical school showing successful completion of all the courses taken and grades received ~~including an English translation of the documents provided.~~ and original documentation of successful completion of all clinical coursework; and (~~5-3-03~~)( )

e. Original documentation of successful completion of three (3) years of progressive postgraduate training at one (1) training program accredited for internship, residency, or

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fellowship training by the ACGME, AOA or the Royal College of Physicians and Surgeons of Canada. ( )

f. ECFMG. The certificate from the ECFMG is not required if the applicant holds a license to practice medicine which was issued prior to 1958 in one (1) of the states of the United States and which was obtained by written examination. ( )

**02. International Medical School Requirements.** ~~A foreign medical school must meet and comply with the following requirements:~~ (7-1-93)( )

a. An international medical school, as listed in the World Health Organization Directory of Medical Schools, which issued its first doctor of medicine degree less than fifteen (15) years prior to an application for licensure, must provide documented evidence of degree equivalency acceptable to the Board including, but not limited to: ( )

ai. The doctor of medicine degrees issued must be ~~comparable~~ substantially equivalent to the degrees issued by acceptable medical schools located within the United States or Canada. Equivalency shall be demonstrated, in part, by original documentation of a medical curriculum of not less than thirty-two (32) months, or its equivalent, of full-time classroom instruction and supervised clinical coursework. Such clinical coursework shall be in a hospital or hospitals that, at the time of the applicant's coursework, documented its evaluation of the applicant's performance in writing as a basis for academic credit by the medical school; (7-1-93)( )

bii. ~~If the foreign medical school issued its first M.D. degrees after 1975, the school must provide documented evidence of degree equivalency acceptable to the Board.~~ The medical school's admission requirements, including undergraduate academic subject requirements, entrance examination scores, and core curriculum are substantially equivalent to medical schools located within the United States or Canada; (3-30-06)( )

ei. ~~If the foreign medical school issued valid degrees prior to 1975, the Board, in its discretion may require documented evidence of degree equivalency.~~ The medical school has adequate learning facilities, class attendance, medical instruction, and clinical rotations consistent with quality medical education. (3-30-06)( )

iv. The medical school has not been disapproved or has its authorization, accreditation, certification, licensure, or approval denied or removed by any state, country or territorial jurisdiction; and ( )

v. The medical school does not issue diplomas, confer degrees or allow graduation based on Internet or on-line courses inconsistent with quality medical education. ( )

b. An international medical school, as listed in the World Health Organization Directory of Medical Schools, which issued its first doctor of medicine degree more than fifteen (15) years prior to an application for licensure, may, in the Board's discretion, be required to provide original documented evidence of degree equivalency acceptable to the Board. ( )

**03. Postgraduate Training.** ~~The foreign medical school graduate must submit~~



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~~documentation that the applicant has satisfactorily completed three (3) years of progressive postgraduate training in a program which is located in the United States or Canada, which is approved for such training by the Accreditation Council for Graduate Medical Education and which is conducted under the direction of an acceptable school of medicine; provided however, applicants who do not have an ECFMG certificate must also submit documentation that their three (3) years of postgraduate training included at least one (1) academic year of supervised clinical training conducted under the direction of an acceptable school of medicine. (3-30-06)~~

~~04. **ECFMG.** The certificate from the Educational Commission for Foreign Medical Graduates is not required if the applicant holds a license to practice medicine which was issued prior to 1958 in one (1) of the states of the United States and which was obtained by written examination. (3-30-06)~~

~~05. **English Language.** The foreign medical student applicant must be able to speak, write and read the English language. (7-1-93)~~

### 052. GRADUATES OF UNAPPROVED INTERNATIONAL MEDICAL SCHOOLS LOCATED OUTSIDE THE UNITED STATES OR CANADA.

In addition to meeting the requirements of Section 050, ~~G~~graduates of unapproved international medical schools located outside the United States or Canada that do not meet the requirements of Section 051, shall ~~meet~~ submit to the Board an original certificate or document of three (3) of the four (4) following requirements. (3-30-06)( )

01. ~~Hold~~ **Valid ECFMG Certificate.** Hold a valid certificate issued by ECFMG. (5-3-03)( )

02. **Three Years of Completed Post Graduate Training.** ~~Completed~~ Successful completion of three (3) years of progressive post graduate training at one (1) training program accredited for internship, residency or fellowship training in an ~~American Council for Graduate Medical Education (ACGME)~~ or ~~American Osteopathic Association (AOA)~~ or Royal College of Physicians and Surgeons of Canada approved program. (3-30-06)( )

03. ~~Hold~~ **Board Certification.** Hold ~~current~~ Bboard certification by a ~~specialty~~ Specialties board approved by the American Board of Medical ~~Specialties~~ Specialties or the AOA. (5-3-03)( )

04. ~~Have~~ **Five Years Unrestricted Practice.** ~~Provide e~~ Evidence of five (5) years of unrestricted practice as a licensee of any United States or Canadian jurisdiction. (5-3-03)( )

### (BREAK IN CONTINUITY OF SECTIONS)

### 077. INACTIVE LICENSE.

01. **Issuance of Inactive License.** Any applicant who is ~~entitled~~ eligible to be issued a license to practice medicine, except a volunteer license, may be issued, upon request, an inactive license to practice medicine on the condition that he will not engage in the practice of medicine in

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this state. An inactive license fee shall be collected by the Board. ~~(3-30-06)~~(\_\_\_\_)

**02. Inactive License Renewal.** Inactive licenses shall be issued for a period of not less than one (1) year or more than five (5) years and such licenses shall be renewed upon payment of an inactive license renewal fee. The inactive license certificate shall set forth its date of expiration. (3-30-06)

**03. Inactive to Active License.** An inactive license may be converted to an active license to practice medicine by application to the Board and payment of required fees. Before the license will be converted the applicant must account for the time during which an inactive license was held. The Board may, in its discretion, require a personal interview. (7-1-93)

### 078. LICENSES.

**01. Licensure Expiration.** Each license to practice medicine shall be issued for a period of not less than one (1) year or more than five (5) years. Each license shall set forth its expiration date on the face of the certificate. Prorated fees may be assessed by the Board to bring the expiration date of the license within the next occurring license renewal period. The Board may condition the issuance of such a license for the full term upon the occurrence of events specified by the Board and the Board may extend a license for an intermediate period of time. (3-30-06)

**02. Renewal.** Each license to practice medicine may be renewed prior to its expiration date by the payment of a renewal fee to the Board and by completion of a renewal form provided by the Board. In order to be eligible for renewal, a licensee must provide a current address to the Board and must notify the Board of any change of address prior to the renewal period. Licenses not renewed by their expiration date shall be canceled. (3-30-06)

**03. Reinstatement.** Licenses canceled for nonpayment of renewal fees may be reinstated by filing a reinstatement application on forms prescribed by the Board and upon payment of a reinstatement fee and applicable renewal fees for the period the license was lapsed. (3-30-06)

**04. Relicensure.** ~~Persons~~ Physicians whose licenses have been canceled for a period of more than five (5) years, shall be required to make application to the Board as new applicants for licensure. ~~(7-1-93)~~(\_\_\_\_)

### 079. CONTINUING MEDICAL EDUCATION (CME) REQUIRED.

**01. Purpose.** The purpose of practice relevant CME is to enhance competence, performance, understanding of current standards of care, and patient outcomes. (5-3-03)

**02. Renewal.** Each person licensed to practice medicine and surgery or osteopathic medicine or surgery in Idaho shall complete no less than forty (40) hours of practice relevant, Category 1, CME every two (2) years. (5-3-03)

**03. Approved Programs.** All education offered by institutions or organizations accredited by the ~~Accreditation Council on Continuing Medical Education (ACCME)~~ and

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reciprocating organizations or the ~~American Osteopathic Association~~ (AOA) are considered approved. (5-3-03)( )

**04. Verification of Compliance.** Licensees shall, at license renewal, provide a signed statement to the Board indicating compliance. The Board, in its discretion, may require such additional evidence as is necessary to verify compliance. (5-3-03)

**05. Alternate Compliance.** The Board may accept certification or recertification by a member of the American Board of Medical Specialties, the American Osteopathic Association Bureau of Professional Education, or the Royal College of Physicians and Surgeons of Canada in lieu of compliance with continuing education requirements during the cycle in which the certification or recertification is granted. The Board may also grant an exemption for full time participation in a residency or fellowship training at a professionally accredited institution. (5-3-03)

**06. Penalties for Noncompliance.** The Board may condition, limit, suspend, or refuse to renew the license of any person whom the Board determines has failed to comply with the continuing education requirements of this chapter. (5-3-03)

### 080. VOLUNTEER LICENSE.

**01. License.** Upon completion of an application and verification of qualifications, the Board may issue a volunteer license to a physician who is retired from active practice for the purpose of providing medical service to people who, due to age, infirmity, handicap, indigence or disability, are unable to receive regular medical treatment. (3-30-06)

**02. Retired Defined.** A physician previously holding a license to practice medicine and surgery and osteopathic medicine and surgery in Idaho or another state shall be considered retired if, prior to the date of the application for a volunteer's license, he has: (3-30-06)

**a.** Surrendered or allowed his license with active status to expire with the intent of ceasing active practice for remuneration or; (3-30-06)

**b.** Converted his active license to an inactive status with the intention of ceasing to actively practice for remuneration or; (3-30-06)

**c.** Converted his license with active or inactive status to a license with retirement or similar status that proscribed the active practice of medicine. (3-30-06)

**03. Eligibility.** A physician whose license has been restricted, suspended, revoked surrendered, resigned, converted, allowed to lapse or expire as the result of disciplinary action or in lieu of disciplinary action shall not be eligible for a volunteer license. The volunteer license cannot be converted to a license with active, inactive or temporary status. (3-30-06)

**04. Application.** The application for a volunteer license shall include the requirements listed in Section 050 of these rules and: (3-30-06)

**a.** Verification that the applicant held an active license in good standing in Idaho or

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another state within five (5) years of the date of application for a volunteer license. (3-30-06)

**b.** The Board may at its discretion issue a volunteer license to a physician who has not held an active license in good standing for greater than five (5) years if the applicant has completed an examination acceptable to the Board that demonstrates the applicant possesses the knowledge and skills required to practice. (3-30-06)

**c.** A notarized statement from the applicant on a form prescribed by the Board, that the applicant will not provide any physician services to any person other than those permitted by the license and that the applicant will not accept any amount or form of remuneration, other than as reimbursement for the amount of actual expenses incurred as a volunteer physician, for any physician services provided under the authority of a volunteer's license. (3-30-06)

**d.** A completed self query of the National Practitioner Databank submitted to the Board. (3-30-06)

**05. Expiration.** The volunteer license shall be valid until the expiration date printed on the license and may be renewed in accordance with these rules. (3-30-06)

**06. Discipline.** The volunteer license is subject to discipline in accordance with Section 54-1814, Idaho Code, and these rules. (3-30-06)

**081. -- 099. (RESERVED).**

**100. FEES. -- TABLE.**

**01. Fees -- Table.** Nonrefundable ~~Fees by the Board~~ are as follows:

<b><i>Fixed Fees -- Table</i></b>	
Licensure Fee	<u>Not more than \$4600</u>
Temporary License	<u>Not more than \$4300</u>
Reinstatement License Fee plus total of renewal fees not paid by applicant	<u>Not more than \$4300</u>
Inactive License Renewal Fee	<u>Not more than \$75100</u>
Renewal of License to Practice Medicine Fee	<u>Not more than \$2300</u>
Reactivation License Fee	<u>Not more than \$4200</u>
Duplicate Wallet License	<u>Not more than \$420</u>
Duplicate Wall License	<u>Not more than \$250</u>
Volunteer License Application Fee	\$0
Volunteer License Renewal Fee	\$0

(~~3-30-06~~)( )

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**02. Administrative Fees for Services.** Administrative fees for services shall be billed on the basis of time and cost. (7-1-93)

### 101. ADDITIONAL GROUNDS FOR SUSPENSION, REVOCATION OR DISCIPLINARY SANCTIONS.

**01. Discipline.** In addition to the statutory grounds for medical discipline set forth in Idaho Code, Section 54-1814, every person licensed to practice medicine or registered as an extern, intern, resident or physician's assistant is subject to discipline by the Board upon any of the following grounds: (~~7-1-93~~)( )

**02. Unethical Advertising.** Advertising the practice of medicine in any unethical or unprofessional manner, includes but is not limited to: (7-1-93)

**a.** Using advertising or representations likely to deceive, defraud or harm the public. (7-1-93)

**b.** Making a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, treatment or remedy prescribed by him or her at his or her direction in the treatment of any disease or other condition of the body or mind. (7-1-93)

**03. Standard of Care.** Providing health care which fails to meet the standard of health care provided by other qualified physicians in the same community or similar communities, includes but is not limited to: (7-1-93)

**a.** Being found mentally incompetent or insane by any court of competent jurisdiction. (7-1-93)

**b.** Engaging in practice or behavior that demonstrates a manifest incapacity or incompetence to practice medicine. (7-1-93)

**c.** Allowing another person or organization to use his or her license to practice medicine. (7-1-93)

**d.** Prescribing, selling, administering, distributing or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug to himself or herself or to a spouse, child or stepchild. (3-19-99)

**e.** Violating any state or federal law or regulation relating to controlled substances. (7-1-93)

**f.** Directly promoting surgical procedures or laboratory tests that are unnecessary and not medically indicated. (7-1-93)

**g.** Failure to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by his or her legally designated representative. (7-1-93)

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**h.** Failing to maintain adequate records. Adequate patient records means legible records that contain, at a minimum, subjective information, an evaluation and report of objective findings, assessment or diagnosis, and the plan of care. (3-30-06)

**04. Conduct.** Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient, includes but is not limited to: (7-1-93)

**a.** Obtaining any fee by fraud, deceit or misrepresentation. (7-1-93)

**b.** Employing abusive billing practices. (7-1-93)

**c.** Failure to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by his or her legally designated representative. (7-1-93)

**d.** Commission of any act of sexual contact, misconduct, exploitation or intercourse with a patient or former patient or related to the licensee's practice of medicine. (7-1-93)

**i.** Consent of the patient shall not be a defense. (3-19-99)

**ii.** Section 101 does not apply to sexual contact between a medical care provider and the provider's spouse or a person in a domestic relationship who is also a patient. (3-19-99)

**iii.** A former patient includes a patient for whom the physician has provided medical services or prescriptions within the last twelve (12) months. (3-19-99)

**iv.** Sexual or romantic relationships with former patients beyond that period of time may also be a violation if the physician uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the patient. (3-19-99)

**e.** Accepting any reimbursement for service, beyond actual expenses, while providing physician services under a volunteer license. (3-30-06)

**f.** Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient, Board or Committee on Professional Discipline member, Board staff, hearing officer or witness in an attempt to influence the outcome of a disciplinary proceeding, investigation or other legal action. (3-30-06)

**g.** Failure to obey state and local laws and rules governing the practice of medicine. ( )

**h.** Failure to be lawfully present in the United States. ( )

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 22 - IDAHO STATE BOARD OF MEDICINE**

#### **22.01.02 - RULES OF THE BOARD OF MEDICINE FOR THE REGISTRATION OF EXTERNS, INTERNS, AND MEDICAL RESIDENTS**

##### **DOCKET NO. 22-0102-0701 (FEE RULE)**

##### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-1806(2)(11), 54-1806A, 54-1812, 54-1813(2) and 54-1814, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

There are no changes in the pending rule. The proposed changes amend existing language relating to the registration for students and graduates of medical schools in the U.S. and Canada as well as international medical students and graduates; clarify medical education requirements; include definitions; broaden the fee schedule and to update and clarify rules.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 82 through 86.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The fee schedule has been broadened, however, there will be no increase in fees. This fee or charge is being imposed pursuant to Section 54-1807, Idaho Code.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.

DATED this 24th day of October, 2007.

## **HEALTH AND WELFARE COMMITTEE**

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**STATE BOARD OF MEDICINE**  
**Registration of Externs, Interns, and Residents**

**Docket No. 22-0102-0701**  
**PENDING FEE RULE**

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Nancy M. Kerr, Executive Director  
Idaho State Board of Medicine  
1755 Westgate Drive, Ste. 140

PO Box 83720, Boise, ID 83720-0058  
Phone: (208) 327-7000 Fax: (208) 327-7005

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1806 (2)(11), 54-1806A, 54-1812, 54-1813 (2) and 54-1814, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**These proposed changes amend existing language relating to the registration for students and graduates of medical schools in the U.S. and Canada as well as international medical students and graduates; clarify medical education requirements; include definitions; broaden the fee schedule and to update and clarify rules.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

**The fee schedule has been broadened, however, there will be no increase in fees. Authority for imposition of this fee is found in Section 54-1807, Idaho Code.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted, however, the Board received input and comments from legislators, international medical school students and graduates, physicians and the public regarding the registration of qualified externs, interns and residents from international medical schools particularly given the shortage of physicians in Idaho.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN**



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### STATE BOARD OF MEDICINE Registration of Externs, Interns, and Residents

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**COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this August 21, 2007.

### THE FOLLOWING IS THE TEXT OF THE PENDING RULE

#### 22.01.02 - RULES OF THE BOARD OF MEDICINE FOR THE REGISTRATION OF EXTERNS, INTERNS, AND ~~MEDICAL~~ RESIDENTS

##### **000. LEGAL AUTHORITY.**

Pursuant to Idaho Code, Sections 54-1806 (2)(11), ~~and Section~~ 54-1806A, 54-1812, 54-1813 (2) and 54-1814, the Idaho State Board of Medicine is authorized to promulgate rules to govern the activities of persons employed as or serving as externs, interns and residents. (7-1-93)(\_\_\_\_)

##### **001. TITLE AND SCOPE.**

The rules shall be cited as IDAPA 22.01.02, "Rules of the Board of Medicine for the Registration of Externs, Interns, and ~~Medical~~ Residents." (7-1-93)(\_\_\_\_)

##### **002. WRITTEN INTERPRETATIONS.**

Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rule making that originally proposed the rules and review of comments submitted in the rulemaking process in the adoption of these rules are available for review and copying at cost from the Board of Medicine, 1755 Westgate Drive, Suite 140, Box 83720 Boise, Idaho 83720-0058. (\_\_\_\_)

##### **003. ADMINISTRATIVE APPEAL.**

All contested cases shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General" and IDAPA 22.01.07, "Rules of Practice and Procedure of the Board of Medicine." (\_\_\_\_)

##### **004. PUBLIC RECORD ACT COMPLIANCE.**

These rules have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (\_\_\_\_)

##### **005. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into these rules. (\_\_\_\_)

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**006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

The central office of the Board of Medicine will be in Boise, Idaho. The Board's mailing address, unless otherwise indicated, will be Idaho State Board of Medicine, P.O. Box 83720, Boise, Idaho 83720-0058. The Board's street address is 1755 Westgate Drive, Suite 140, Boise, Idaho 83704. The telephone number of the Board is (208) 327-7000. The Board's facsimile (FAX) number is (208) 327-7005. The Board's web site is [www.bom.state.id.us](http://www.bom.state.id.us). The Board's office hours for filing documents are 8 a.m. to 5 p.m. MST. ( )

**007. FILING OF DOCUMENTS -- NUMBER OF COPIES.**

All documents in rulemaking or contested case proceedings must be filed with the office of the Board. The original and ten (10) copies of all documents must be filed with the office of the Board. ( )

**008. SEVERABILITY.**

The sections and subsections of these administrative rules are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. ( )

~~002.~~—009. (RESERVED).

**010. DEFINITIONS.**

**01. Acceptable Post Graduate Training Program.** A post graduate medical training program or course of medical study which has been approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association. ( )

**042. Acceptable Training Program.** A medical training program or ~~approved~~ course of medical study which has been approved by the Liaison Committee for Medical Education (LCME), Council on Medical Education, ~~or~~ American Osteopathic Association ~~or the Board~~. (3-15-78)( )

**03. Acceptable Post Graduate Training Program.** A post graduate medical training program or course of medical study which has been approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association. ( )

**04. Accreditation Council for Graduate Medical Education (ACGME).** A nationally recognized accrediting authority responsible for accreditation of post-Doctor of Medicine medical training programs within the United States or its successor. ( )

**065. Alternate Supervising Physician.** A physician currently licensed to practice medicine and surgery or licensed to practice osteopathic medicine and surgery in Idaho who has been designated by the supervising physician and approved by the Board ~~to supervise~~ who is responsible for the direction and supervision of the extern, intern, or resident in the temporary absence of the supervising physician. (3-15-78)( )

**046. Board.** The Idaho State Board of Medicine. (3-15-78)

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**07. Educational Commission for Foreign Medical Graduates (ECFMG).** A nationally recognized non-profit organization that certifies international medical graduates who seek to enter United States residency and fellowship programs and conducts the Clinical Skills Assessment (CSA) or its successor. ( )

**028. Extern.** A bona fide student enrolled in an acceptable school of medicine as defined in IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho," Subsection 010.031 or 010.02, who has not received his degree. (3-15-78)( )

**039. Intern or Resident.** Any person who has completed a course of study at an acceptable school of medicine as defined in IDAPA 22.01.01, "Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho," Subsection 010.031 or 010.02, and who is enrolled in an acceptable postgraduate medical training program. (3-15-78)( )

**10. Liaison Committee on Medical Education (LCME).** An internationally recognized accrediting authority, sponsored by the Association of American Medical Colleges and the American Medical Association, for medical education programs leading to a Doctor of Medicine degree in United States and Canadian medical schools or its successor. ( )

**11. Original Certificate or Document.** An original document itself or a certified copy thereof issued by the agency or institution and mailed or delivered directly from the source to the Board or a Board approved credential verification service. ( )

**12. Person.** A natural, living human individual. ( )

**0513. Supervising Physician.** A ~~person~~ physician approved by the Board who ~~is licensed~~ holds a current active license to practice medicine and surgery or osteopathic medicine and surgery in Idaho, in good standing with no restrictions upon or actions taken against his license, who signs the application for registration of a extern, intern or resident, and who is responsible for the direction and supervision of their activities. (3-15-78)( )

**011. -- 015. (RESERVED).**

### **016. REQUIREMENTS FOR REGISTRATION OF EXTERNS, INTERNS, AND RESIDENTS.**

**01. Residence.** No period of residence in Idaho shall be required of any applicant, however, each applicant for registration must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request only. The Board shall refuse to issue a registration or renew a registration if the applicant is not lawfully present in the United States. ( )

**02. English Language.** Each applicant shall speak, write, read, understand and be understood in the English language. Evidence of proficiency in the English language must be provided upon request only. ( )

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**043. Application.** Each extern, intern or resident intending to commence activities in the state of Idaho which may involve activities constituting the practice of medicine, must submit a completed registration application to the Board on forms furnished by the Board and be issued a registration certificate prior to the commencement of any such activities. Any diploma or other document required to be submitted to the Board which is not in the English language must be accompanied by a certified translation thereof into English. The application form shall be verified and shall require the following information: ~~(3-15-78)~~( )

**a.** Personal identification information and the educational background of the extern, intern, or resident including his college education, medical school education and any postgraduate training programs; ~~(3-15-78)~~( )

**b.** The disclosure of any criminal convictions, criminal charges, medical disciplinary actions or medical malpractice actions involving the extern, intern, or resident; (3-15-78)

**c.** A complete description of the program or course of study ~~he~~ in the acceptable training program or acceptable post graduate training program the applicant intends to follow, including documentation of the liability coverage to be provided to the applicant; ~~(3-15-78)~~( )

**d.** The name and address of the supervising physician and alternate supervising physician and the location of the program or course of study; (3-15-78)

**e.** The signature by the supervising physician and alternate supervising physician by which they acknowledge and accept responsibility for the activities of the extern, intern, or resident; (3-15-78)

**f.** An original certificate or document confirming ECFMG certification of the international medical graduate; and ( )

**fg.** Such other information as the Board deems relevant in reviewing the registration application. (3-15-78)

### **017. GENERAL PROVISIONS FOR REGISTRATION.**

**01. Character.** The Board may refuse registration or to renew registration if it finds that the applicant has engaged in conduct prohibited by Section 54-1814, Idaho Code; provided the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. ( )

**02. No Action on Application.** An application upon which the applicant takes no further action will be held for no longer than one (1) year. ( )

**023. Registration Certificate.** Upon approval of the registration application, the Board ~~shall~~ may issue a registration certificate which shall set forth the period during which the registrant ~~is entitled to~~ may engage in activities which may involve the practice of medicine, ~~and which~~. Each registration shall be issued for a period of not less than one (1) day or more than three (3) years and shall set forth its expiration date on the face of the certificate. Each registration shall

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identify the supervising physician and alternate supervising physician. If the Board deems the intern or resident qualified, and if the course study requires, the Board ~~shall~~ may additionally certify on the registration certificate that the intern or resident is qualified to write prescriptions for Class III through Class V scheduled (~~but nontriplicate~~) medications. (3-15-78)( )

**034. Termination of Registration.** The registration of an extern, intern or resident may be terminated, suspended or made conditional by the Board on the grounds set forth in Section 54-1814, Idaho Code, and under the procedures set forth in Section 54-1806A, Idaho Code. (3-15-78)

**05. Extension of Registration.** Each registration may be extended one (1) time and may be extended prior to its expiration date upon approval of a written request to the Board. Registrations not extended by their expiration date shall be canceled. ( )

**06. Notification of Change.** Externs, interns and residents must notify the Board of any adverse action or termination from any training program or post graduate training program and any name changes within thirty (30) days of such event. ( )

**07. Disclosure.** It shall be the responsibility of each registrant to ensure that every patient is aware of the fact that such extern, intern and resident is currently enrolled in a training program or post graduate training program and under the supervision of a licensed physician. This disclosure requirement can be fulfilled by the use of name tags, correspondence, oral statements or such other procedures that under the involved circumstances adequately advise the patient of the education and training of the extern, intern and resident. ( )

### **0178. FEES.**

**01. Registration Fee.** The nonrefundable registration fee shall be no more than ~~ten~~ twenty-five dollars (~~\$1025~~). (7-1-93)( )

**02. Other.** Administrative fee for services, including photocopying and review of records shall be billed on the basis of time and charges. (3-15-78)

### **0189. EFFECTIVE DATE.**

These rules shall be effective March 15, 1978 and thereafter. (3-15-78)

### **01920. -- 999. (RESERVED).**

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 22 - IDAHO STATE BOARD OF MEDICINE**

#### **22.01.11 - RULES FOR LICENSURE OF RESPIRATORY THERAPISTS AND PERMITTING OF POLYSOMNOGRAPHERS IN IDAHO**

##### **DOCKET NO. 22-0111-0701 (FEE RULE)**

##### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-4304A, 54-4305, 54-4309, 54-4311, 544312, 54-4314 and 54-4316, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The proposed rule changes amend existing language to include a renewal requirement of current CRT certification, current RRT registration or current registration as a polysomnographic technologist; require English language proficiency; require lawful presence in the U.S.; broaden the fee schedules and to update and clarify rules.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 87 through 100.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The Licensure Board recognized the need to broaden the fee schedules and to increase three reinstatement fees to reflect and provide for real costs of administration. The respiratory care practitioner license reinstatement fee was increased from thirty-five dollars to fifty dollars; the polysomnographic technologist/technician permit reinstatement fee from thirty-five dollars to fifty dollars and the dual license/permit reinstatement fee from thirty-five dollars to fifty dollars. This fee or charge is being imposed pursuant to Section 54-4311, Idaho Code.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions

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**Licensure of Respiratory Therapists & Polysomnographers**

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concerning this pending rule, contact Nancy M. Kerr, Executive Director, Idaho State Board of Medicine, (208) 327-7000.

DATED this 24th day of October, 2007.

Nancy M. Kerr, Executive Director  
Idaho State Board of Medicine  
1755 Westgate Drive, Ste. 140

PO Box 83720 Boise, ID 83720-0058  
Phone: (208) 327-7000 Fax: (208) 327-7005

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-4304A, 54-4305, 54-4309, 54-4311, 54-4312, 54-4314 and 54-4316, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These proposed changes amend existing language to include a renewal requirement of current CRT certification, current RRT registration or current registration as a polysomnographic technologist; require English language proficiency; require lawful presence in the U.S.; broaden the fee schedules and to update and clarify rules.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The Licensure Board recognized the need to broaden the fee schedules and to increase three (3) reinstatement fees to reflect and provide for real costs of administration. The respiratory care practitioner license reinstatement fee was increased from thirty-five dollars (\$35) to fifty dollars (\$50); the polysomnographic technologist/technician permit reinstatement fee was increased from thirty-five dollars (\$35) to fifty dollars (\$50) and the dual license/permit reinstatement fee was increased from thirty-five dollars (\$35) to fifty dollars (\$50). Authority for imposition of these fees is found in Section 54-4311, Idaho Code.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

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**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the amendments.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nancy M. Kerr, Idaho State Board of Medicine, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this August 21st day, 2007.

### ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

#### **000. LEGAL AUTHORITY.**

Pursuant to Sections 54-4304A, 54-4305, 54-4309, 54-4310, 54-4311, 54-4312 and 54-4316 ~~and 54-4304A~~, Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules governing the practice of respiratory care and polysomnography related respiratory care.

(~~3-16-04~~)( )

### ***(BREAK IN CONTINUITY OF SECTIONS)***

#### **008. SEVERABILITY.**

The sections and subsections of these administrative rules are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. ( )

#### **~~008.~~ 009. (RESERVED).**

#### **010. DEFINITIONS.**

**01. Act.** The Respiratory Care Practice Act of 1991, Title 54, Chapter 43, Idaho Code. (4-28-93)

**02. Applicant.** A person who applies for a license, dual license/permit, permit, conditional permit, or a temporary permit pursuant to this chapter and Title 54, Chapter 43, Idaho Code. (3-16-04)

**03. Board.** The Idaho State Board of Medicine, established pursuant to Section 54-1805, Idaho Code. (3-16-04)

**04. Board of Registered Polysomnographic Technologists.** A nationally recognized



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private testing, examining and credentialing body for the polysomnography related respiratory care profession. (3-16-04)

**05. Certified Pulmonary Function Technologist (CPFT).** The professional designation earned by a person who has successfully completed the entry level pulmonary function certification examination administered by the National Board for Respiratory Care, Inc., or by an equivalent board, recognized by the Board. (3-16-04)

**06. Certified Respiratory Therapist (CRT).** The professional designation earned by a person who has successfully completed the entry level examination administered by the National Board for Respiratory Care, Inc., or by an equivalent board, recognized by the Board. (3-16-04)

**07. Comprehensive Registry Exam.** The comprehensive registry examination administered by the Board of Registered Polysomnographic Technologists, or administered by an equivalent board, recognized by the Board, the successful completion of which entitles a person to the professional designation of Registered Polysomnographic Technologist (RPSGT). (3-16-04)

**08. Conditional Permit.** A time-restricted permit issued by the Board, upon the recommendation of the Licensure Board, as set forth in this chapter and Section 54-4304A, Idaho Code, to a registered polysomnographic technologist, polysomnographic technician or a polysomnographic trainee, on or after January 1, 2004, and issued until issuance of permits as provided in this chapter. (3-16-04)

**09. Entry Level Examination.** The certification examination for entry level respiratory therapy practitioners administered by the National Board for Respiratory Care, Inc., or certification examination administered by an equivalent board, recognized by the Board, the successful completion of which entitles a person to the professional designation of "Certified Respiratory Therapist" (CRT). (3-16-04)

**10. Licensed Physician.** A physician licensed to practice medicine and surgery or osteopathic medicine and surgery, by the Idaho State Board of Medicine. (3-16-04)

**11. Licensure.** The issuance of a license to an applicant under the provisions of this chapter and Title 54, Chapter 43, Idaho Code entitling such person to hold himself out as a respiratory care practitioner and to practice or perform respiratory care in this state. (3-16-04)

**12. Licensure Board.** The Licensure Board established by this chapter and Section 54-4313, Idaho Code. (3-16-04)

**13. Medical Practice Act.** The Medical Practice Act of 1977, Title 54, Chapter 18, Idaho Code. ( )

**134. National Board of Respiratory Care, Inc.** A nationally recognized private testing, examining and credentialing body for the respiratory care profession. (3-16-04)

**145. Performance of Respiratory Care.** Respiratory care practiced or performed in

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accordance with the written, telephonic or verbal prescription of a licensed physician and includes, but is not limited to, the diagnostic and therapeutic use of the following: administration of medical gases, (except for the purpose of anesthesia), aerosols and humidification; environmental control mechanisms and hyperbaric therapy, pharmacologic agents related to respiratory care protocols, mechanical or physiological ventilatory support; bronchopulmonary hygiene, cardiopulmonary resuscitation; maintenance of the natural airway; insertion and maintenance of artificial airways; specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurements of ventilatory volumes, pressures and flows, collection, reporting and analysis of specimens of blood and blood gases, arterial punctures, insertion and maintenance of arterial lines, expired and inspired gas samples, respiratory secretions, and pulmonary function testing; and hemodynamic and other related physiologic measurements of the cardiopulmonary system, observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing and determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics; implementation based on observed abnormalities of appropriate reporting or referral of respiratory care or changes in treatment regimen, pursuant to a prescription by a physician or the initiation of emergency procedures.

(4-28-93)

**156. Permit.** The issuance of a permit to an applicant under the provisions of this chapter and Section 54-4304A, Idaho Code, entitles such person to hold himself out as a registered polysomnographic technologist, polysomnographic technician, or polysomnographic trainee and to perform polysomnography related respiratory care in this state.

(3-16-04)

**167. Person.** A natural living human individual.

(3-16-04)

**178. Polysomnographic Technician.** A person who holds a permit as set forth in this chapter and Section 54-4304A, Idaho Code, and who performs polysomnography related respiratory care services under the supervision of an Idaho permitted registered polysomnographic technologist, licensed respiratory care practitioner or an Idaho licensed physician.

(3-16-04)

**189. Polysomnographic Trainee.** A person who holds a temporary permit as set forth in this chapter and Section 54-4304A, Idaho Code, and who performs polysomnography related respiratory care services under the direct supervision of an Idaho licensed respiratory care practitioner, or a person exempt from such licensure pursuant to this chapter and Section 54-4308, Idaho Code, an Idaho permitted registered polysomnographic technologist, an Idaho permitted polysomnographic technician or an Idaho licensed physician. Direct supervision by an Idaho licensed respiratory care practitioner, or such person exempt from such licensure pursuant to this chapter and Section 54-4308, Idaho Code, or an Idaho permitted registered polysomnographic technologist or technician, or an Idaho licensed physician, means that such a person shall be on the premises where such polysomnographic related respiratory care services are provided and shall be immediately available for consultation with the polysomnographic trainee.

(3-16-04)

**1920. Polysomnography.** The process of analysis, attended monitoring and recording of physiologic data during sleep and wakefulness to assist in the assessment and diagnosis of sleep/wake disorders and other disorders, syndromes and dysfunctions that either are sleep related,

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manifest during sleep or disrupt normal sleep/wake cycles and activities. (3-16-04)

**201. Polysomnography Related Respiratory Care Services.** The limited practice of respiratory care in the provision of polysomnography services, under the supervision of an Idaho licensed physician, by a person at a sleep disorder center or laboratory who holds a permit issued by the Board, as a registered polysomnographic technologist, polysomnographic technician or a polysomnographic trainee, or who is otherwise licensed as a respiratory care practitioner or who is exempt from licensure or permitting pursuant to this chapter and Section 54-4308, Idaho Code. Polysomnography related respiratory care services include therapeutic and diagnostic use of oxygen, noninvasive ventilatory assistance of spontaneously breathing patients and cardiopulmonary resuscitation and maintenance of nasal and oral airways that do not extend into the trachea, as ordered by an Idaho licensed physician or by written procedures and protocols of the associated sleep disorder center or laboratory as approved by an Idaho licensed physician and which do not violate any rules adopted by the Board. This chapter does not in any way authorize the practice of medicine or any of its branches by any person not so licensed by the Board. Further, licensed respiratory practitioners, and those exempt from licensure pursuant to this chapter and Section 54-4308, Idaho Code, are not limited in their scope of practice of provision of respiratory care, which they may provide, including care in connection with the provision of polysomnography services. (3-16-04)

**242. Practice of Respiratory Care.** Means, but shall not be limited to, the provision of respiratory and inhalation therapy which shall include, but not be limited to: therapeutic and diagnostic use of medical gases, humidity and aerosols including the maintenance of associated apparatus; administration of drugs and medications to the cardiorespiratory system; provision of ventilatory assistance and ventilatory control; postural drainage, percussion, breathing exercises and other respiratory rehabilitation procedures; cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways; and the transcription and implementation of a physician's written, telephonic or verbal orders pertaining to the practice of respiratory care. It also includes testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment and research. This shall be understood to include, but not be limited to, measurement of ventilatory volumes, pressures and flows, specimen collection of blood and other materials, pulmonary function testing and hemodynamic and other related physiological monitoring of the cardiopulmonary system. The practice of respiratory care is not limited to the hospital setting but shall be performed under the general supervision of a licensed physician. (4-28-93)

**223. Respiratory Care Protocols.** Policies, procedures or protocols developed or instituted by health care facilities or institutions, through collaboration when appropriate or necessary with administrators, physicians, registered nurses, physical therapists, respiratory care practitioners and other licensed, certified or registered health care practitioners. (4-28-93)

**234. Registered Polysomnographic Technologist (RPSGT).** The professional designation earned by a person who has successfully completed the comprehensive registry examination administered by the Board of Registered Polysomnographic Technologists, or by an equivalent board, recognized by the Board, and who holds a permit as set forth in this chapter and Section 54-4304A, Idaho Code, and who works under the supervision of an Idaho licensed physician to provide polysomnography related respiratory care services. (3-16-04)

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**245. Registered Pulmonary Function Technologist (RPFT).** The professional designation earned by a person who has successfully completed the advanced pulmonary function certification examination administered by the National Board for Respiratory Care, Inc., or an advanced pulmonary function certification examination administered by an equivalent board, recognized by the Board. (3-16-04)

**256. Registered Respiratory Therapist (RRT).** The professional designation earned by a person who has successfully completed the written registry and clinical simulation examinations administered by the National Board for Respiratory Care, Inc., or certification examinations administered by an equivalent board, recognized by the Board. (3-16-04)

**267. Respiratory Care.** Allied health profession responsible for the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system, under the general supervision of a licensed physician. (2-23-94)

**278. Respiratory Care Practitioner.** A person who has been issued a license by the Board. (3-16-04)

**289. Respiratory Therapist.** A person who practices or provides respiratory care. (4-28-93)

**2930. Respiratory Therapy.** The practice or performance of respiratory care, including but not limited to, inhalation therapy. (4-28-93)

**301. Sleep Disorder Center or Laboratory.** A facility for sleep related disorders that provides polysomnography and is under the supervision of an Idaho licensed physician or medical director licensed by the Board who is responsible for patient care provided in such center or laboratory. A sleep disorder center or laboratory that provides polysomnography related respiratory care to patients shall have an Idaho licensed respiratory care practitioner, an Idaho permitted registered polysomnographic technologist, an Idaho permitted polysomnographic technician, or a person exempt from licensure or permitting pursuant to this chapter and Section 54-4308, Idaho Code, in constant attendance. (3-16-04)

**342. Supervision of Respiratory Care.** The practice or provision of respiratory care by ~~individuals~~ persons holding a student or consulting and training exemption, or temporary permit shall be in direct association with a respiratory care practitioner or licensed physician who shall be responsible for the activities of the person being supervised and shall review and countersign all patient documentation performed by the ~~individual~~ person being supervised. The supervising respiratory care practitioner or licensed physician need not be physically present or on the premises at all times but must be available for telephonic consultation. The extent of communication between the supervising or consulting respiratory care practitioner or licensed physician and the ~~individual~~ person being supervised shall be determined by the competency of the ~~individual~~ person, the treatment setting, and the diagnostic category of the client. (3-16-04)( )

**323. Temporary Permit.** The Board may issue a temporary permit, limited to a total period of two (2) years, including initial and renewal, to a respiratory care practitioner applicant

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who meets the requirements set forth in this chapter and Section 54-4307, Idaho Code. The Board may issue a temporary permit, limited to a total period of two (2) years, including initial and renewal, to a polysomnographic trainee applicant who meets the requirements set forth in this chapter and Section 54-4304A, Idaho Code. (3-16-04)

**334. Written Registry and Clinical Simulation Examinations.** The certification examinations administered by the National Board of Respiratory Care, Inc., or certification examinations administered by an equivalent board, recognized by the Board, the successful completion of which entitles a person the professional designation of "Registered Respiratory Therapist" (RRT). (3-16-04)

### 011. BOARD OF MEDICINE AND LICENSURE BOARD.

**01. Powers and Duties.** The Board of Medicine shall administer, coordinate and enforce the provisions of this chapter and Title 54, Chapter 43, Idaho Code, and may issue subpoenas, examine witnesses, and administer oaths, and may investigate practices which are alleged to violate the provisions of this chapter. The Board is authorized to enter into such contracts with the National Board for Respiratory Care, Inc., Board of Registered Polysomnographic Technologists or an equivalent board, recognized by the Board, as may be necessary or advisable to provide for or to facilitate verification of any applicant's claim that such applicant has successfully completed the entry level examination and/or the written registry and clinical simulation examinations or comprehensive registry examination. The Licensure Board will work in conjunction with the Board and will perform the duties and functions assigned by the Board, including: (3-16-04)

**a.** Holding meetings, conducting interviews and keeping records and minutes as are necessary to carry out its functions. (3-16-04)

**b.** Evaluating the qualifications of all applicants, making recommendations to and consulting with the Board concerning issuing, renewing and revoking licenses and permits. (3-16-04)

**c.** Performing investigations of misconduct and making recommendations regarding discipline to the Board. (3-16-04)

**d.** Maintaining a list of respiratory care and polysomnography related respiratory care practitioners currently holding a license or permit in this state. (3-16-04)

**02. Membership.** The Licensure Board shall consist of five (5) members appointed by the Board, three (3) of whom shall be certified respiratory care practitioners, one (1) of whom, in addition to being an Idaho licensed respiratory care practitioner, shall also be an Idaho permitted registered polysomnographic technologist. All members shall be residents of Idaho at the time of their appointment and for their term of service. The persons appointed to the Licensure Board who are required to be licensed or hold permits under this chapter shall have been engaged in rendering respiratory care services and polysomnography related respiratory care services, respectively, to the public, in teaching, or in research in respiratory care and polysomnography related respiratory care services, respectively, for at least five (5) years immediately preceding their appointments. Three (3) members shall at all times be holders of valid licenses for the

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practice of respiratory care in Idaho and one (1) member shall also be a holder of a valid Idaho permit as a registered polysomnographic technologist, except for the members of the first Licensure Board following the effective date of this chapter, all of whom shall, at the time of appointment, hold the designation of certified respiratory therapy technician or registered respiratory therapist conferred by the National Board for Respiratory Care, Inc., and all of whom meet the requirements for licensure under the provisions of this chapter. The remaining two (2) members of the Licensure Board shall be members of health professions or members of the public with an interest in the rights of the consumers of health services. Each member of the Licensure Board shall be compensated as provided in Section 59-509(h), Idaho Code. (3-16-04)

**03. Appointment.** The two (2) members of the Licensure Board who shall be licensed respiratory care practitioners shall be selected by the Board after considering a list of three (3) qualified applicants for each such vacancy submitted by the Idaho Society of Respiratory Care or other interested associations. The member of the Licensure Board who shall be a licensed respiratory care practitioner and an Idaho permitted registered polysomnographic technologist shall be selected by the Board after considering a list of three (3) qualified applicants submitted by the Idaho Sleep Disorder Association or other interested associations. In the event of a vacancy in one (1) of the positions, the Idaho Society of Respiratory Care or other interested association may recommend, as soon as practical, at least two (2) and not more than three (3) persons to fill that vacancy. The Board shall appoint, as soon as practical, one (1) person, who shall fill the unexpired term. If recommendations are not made within sixty (60) days of notification and request, the Board may make appointments of any qualified ~~individual~~ person. The remaining two (2) public members shall be selected by the Board, who may solicit nominations of qualified applicants submitted by the Idaho Society For Respiratory Care, the Idaho Sleep Disorder Association or other interested associations or ~~individuals~~ persons. The first vacancy on the Licensure Board which occurs following the effective date of this chapter shall be filled by the appointment of a licensed respiratory care practitioner who is also the holder of a valid Idaho permit as a registered polysomnographic technologist. The Board may remove any Licensure Board member for misconduct, incompetence, or neglect of duty after giving the member a written statement of the charges and an opportunity to be heard thereon. The Executive Director of the Idaho State Board of Medicine shall serve as the Executive Director to the Licensure Board. (3-16-04)( )

**04. Meetings.** The Licensure Board shall hold biannual meetings and elect a chairman who shall preside at meetings of the Licensure Board. In the event the chairman is not present at any Licensure Board meeting, the Licensure Board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the Licensure Board shall constitute a quorum. Other meetings may be convened at the call of the chairman or the written request of any two (2) Licensure Board members. (3-16-04)

**05. Terms.** All appointments shall be for three (3) year terms, but no person shall be appointed to serve more than two (2) consecutive terms. Terms shall begin on the first day of the appointment or when successors are appointed. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

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### **031. GENERAL PROVISIONS FOR LICENSURE AND PERMITS.**

**01. Moral Character.** An applicant for licensure must be of good moral character and shall meet the requirements set forth in Section 54-4306, Idaho Code. An applicant for a permit must be of good moral character and shall meet the requirements set forth in Section 54-4304A, Idaho Code. The Board may refuse licensure or to issue a permit if it finds the applicant has engaged in conduct prohibited by Section 54-4312, Idaho Code, providing the Board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances.

(3-16-04)

**02. No Action on Application.** An application upon which the applicant takes no further action will be held for no longer than one (1) year.

(4-28-93)

**03. Residence.** No period of residence in Idaho shall be required of any applicant, however, each applicant for licensure or permit must be legally able to work and live in the United States. An original certificate or documentation of lawful presence in the United States must be provided upon request only. The Board shall refuse licensure or renew a license or permit if the applicant is not lawfully present in the United States.

( )

**04. English Language.** Each applicant shall speak, write, read, understand and be understood in the English language. Evidence of proficiency in the English language must be provided upon request only.

( )

### **032. APPLICATION FOR LICENSURE AND PERMITS.**

**01. All Applications.** Each applicant for licensure or permit shall submit a completed written application to the Board on forms prescribed by the Board, together with the application fee. The Board may, in its discretion, prorate the application fees charged in conjunction with an application for initial licensure or a temporary permit if such license or temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. The application shall be verified and under oath and shall require documentation of the following information: (4-11-06)

**a.** The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses; and

(2-23-94)

**b.** The disclosure of any charge, investigation or disciplinary action against the applicant by any state professional regulatory agency or professional organization that bears a demonstrable relationship to the ability of the applicant to practice in accordance with the provisions of this chapter; and

(3-16-04)

**c.** The disclosure of the denial of registration or licensure by any country, state or district regulatory body; and

(~~2-23-94~~)( )

**d.** Not less than two (2) certificates of recommendation from persons, other than relatives or ~~individuals~~ persons living with the applicant, who have personal knowledge of at least one (1) year of the applicant's character and the applicant's ability to work as a respiratory therapist or provide polysomnography related respiratory care services; and

(~~3-16-04~~)( )

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e. One (1) unmounted photograph of the applicant, no larger than three by four inch (3" x 4") (head and shoulders), taken not more than one (1) year prior to the date of the application; and (2-23-94)

f. Such other information as deemed reasonably necessary and as is lawful for the Board to identify and evaluate the applicant's credentials; and (3-16-04)

g. Evidence that applicant is no less than eighteen (18) years of age. (3-16-04)

h. The Board may, at its discretion, require the applicant to appear for a personal interview. (3-16-04)

**02. Application for Respiratory Care Practitioner.** (3-16-04)

a. Documentation of evidence that applicant has passed the entry level examination and is a Certified Respiratory Therapist (CRT) or has successfully completed the written registry and clinical simulation examinations and is a Registered Respiratory Therapist (RRT); or (3-16-04)

b. Documentation that the applicant is licensed as a respiratory care practitioner, or the equivalent at the discretion of the Board, in another state, district or territory of the United States. (3-16-04)

c. Application for Temporary Permit. The Board may issue a temporary permit to an applicant who meets the requirements set forth in this chapter and Section 54-4307, Idaho Code. A temporary permit shall authorize the practice of respiratory care under the supervision of a respiratory care practitioner or licensed physician. (3-16-04)

i. A temporary permit for a respiratory care practitioner may be converted to a permanent license by providing to the Board, verification of appropriate certification as a Certified Respiratory Therapist (CRT) or Registered Respiratory Therapist (RRT). (3-16-04)

ii. A temporary permit shall be effective for one (1) year from the date of issuance. (4-28-93)

iii. A temporary permit may be renewed one (1) time for a period of one (1) year, upon application to the Board. (4-28-93)

iv. Application for a temporary permit shall be made to the Board on a form prescribed by the Board, together with the application fee. The Board may, in its discretion, prorate the application fees charged in conjunction with an initial application for a temporary permit if such temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. (4-11-06)

**03. Application for Inactive License.** A person holding a current license issued by the Board to practice as a respiratory care practitioner may be issued, upon written application



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provided by the Board and payment of required fees to the Board, an inactive license on the condition that he will not engage in the provision of respiratory care services as a respiratory care practitioner in this state. (3-16-04)

a. Issuance and Renewal. Inactive licenses shall be issued for a period of not more than five (5) years and such licenses shall be renewed upon payment of an inactive license renewal fee of no more than ~~fifty~~ one hundred dollars (\$~~5100~~) for each renewal year. Such inactive licenses shall expire on the expiration date printed on the face of the certificate unless renewed. (3-16-04)( )

b. Inactive to Active License. An inactive license may be converted to an active license to practice as a respiratory care practitioner upon written application and payment of active licensure fees for each inactive year minus paid inactive fees plus a conversion fee of no more than ~~fifty~~ one hundred dollars (\$~~5100~~) to the Board. The applicant must account for the time during which an inactive license was held and document continuing competence. The Board may, in its discretion, require a personal interview to evaluate the applicant's qualifications. In addition, the Board may require evidence of an educational update and close supervision to assure safe and qualified performance. (3-16-04)( )

#### 04. Application for Respiratory Care and Polysomnography Related Respiratory Care Practitioner. (3-16-04)

a. The Board may issue a dual license/permit to an applicant who meets the requirements set forth in this chapter and Sections 54-4306 and 54-4304A(2) and (3), Idaho Code. A dual license/permit shall authorize the holder to perform respiratory care and polysomnography related respiratory care in this state. (3-16-04)

b. Application for a dual license/permit shall be made to the Board on a form prescribed by the Board, together with the application fee. (3-16-04)

c. Such dual license/permit shall expire on the expiration date printed on the face of the certificate unless renewed. (3-16-04)

#### 05. Application for Polysomnography Related Respiratory Care Practitioner. (3-16-04)

a. Only persons who are licensed as respiratory care practitioners or who are exempt from licensure pursuant to the chapter and Section 54-4308, Idaho Code, or who hold a permit issued by the Board as registered polysomnographic technologists, polysomnographic technicians or polysomnographic trainees may provide polysomnography related respiratory care services. (3-16-04)

b. Qualifications for permit. An applicant for a permit to provide polysomnography related respiratory care services as a registered polysomnographic technologist or polysomnographic technician or for a temporary permit as a polysomnographic trainee under the provisions of Section 032 who is not otherwise licensed to provide respiratory care services or exempt from the requirements of this chapter pursuant to Section 54-4308, Idaho Code, must provide documentation of: (3-16-04)

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- i. Being a high school graduate or have passed a general educational development (GED) examination and earned a GED certificate; and (3-16-04)
- ii. Being currently certified in cardiopulmonary resuscitation (CPR). (3-16-04)
- c. Application for Registered Polysomnographic Technologist. An applicant must provide documentation of successful completion of the comprehensive registry examination as a registered polysomnographic technologist administered by the Board of Registered Polysomnographic Technologists or an equivalent examination, approved by the Board as recommended by the Licensure Board. (3-16-04)
- d. Application for Polysomnographic Technician. An applicant must provide written documentation and a signed affidavit affirming and attesting to one (1) of the following qualifications: (3-16-04)
  - i. Successful completion of a polysomnography program of not less than one (1) year duration, associated with a state licensed or a nationally accredited educational facility, as approved by the Board, as recommended by the Licensure Board; or (3-16-04)
  - ii. Successful completion of a minimum of seven hundred twenty (720) hours of experience as a polysomnographic trainee with documented proficiency in polysomnography related respiratory care services, as approved by the Board, as recommended by the Licensure Board. (3-16-04)
- e. Application for Polysomnographic Trainee. An applicant must provide a signed affidavit from an Idaho permitted registered polysomnographic technologist, an Idaho permitted polysomnographic technician, an Idaho licensed respiratory care practitioner, or an Idaho licensed physician affirming and attesting he shall ensure that there is direct supervision of performance of basic polysomnography related respiratory care services by a polysomnographic trainee applicant. The direct supervisor shall be on the premises where such polysomnographic related respiratory care services are provided and shall be immediately available for consultation with the polysomnographic trainee applicant. The Affiant need not be the direct supervisor at any given time. Such Affiant shall be responsible for the activities of the supervised polysomnographic trainee and shall document his review of all patient documentation performed by the supervised polysomnographic trainee. If at any time during the term of the polysomnographic trainee's permit, the Affiant of the trainee changes, the polysomnographic trainee shall provide a signed affidavit from his new Affiant who will ensure that the trainee has direct supervision. In addition, the applicant shall provide written documentation he has at least one (1) of the following qualifications: (3-16-04)
  - i. At least seven hundred twenty (720) hours of experience as a paid employee or contractor in a health care related field. For the purposes of this Section, experience as a paid employee or contractor in a health care related field shall include any work providing direct clinical care to patients or having worked in a clinical care setting in which the applicant had direct interaction with patients, and an opportunity to observe the provision of clinical care to patients; (3-16-04)

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ii. Current enrollment in a polysomnography program associated with a state licensed or a nationally accredited education facility; or (3-16-04)

iii. Successful completion of twenty-four (24) semester credit hours (or a quarter (1/4) hour system equivalent of the same) of postsecondary education at a state licensed or nationally accredited facility. (3-16-04)

**f. Permits.** All permits shall be issued after applicants have met the requirements of this chapter and Section 54-4304A, Idaho Code and submitted a completed application and payment of a fee in an amount to be fixed by the Board for a period of not less than one (1) year nor more than five (5) years, the exact period to be fixed by the Board. Such permits shall expire on the expiration date printed on the face of the certificate unless renewed. The failure of any person to renew a renewable permit shall not deprive such person of the right to renewal, except as provided for herein and Section 54-4312, Idaho Code. The Board shall collect a fee in an amount to be fixed by the Board for the initial issuance and each renewal year. (3-16-04)

i. Permits for registered polysomnographic technologists, including renewals, shall be issued for a period of not less than one (1) year nor more than five (5) years. Such permits shall be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee. (3-16-04)

ii. Permits for polysomnographic technicians, including renewals, shall be issued for a period of one (1) year, and shall be renewed for successive one (1) year periods, not to exceed three (3) renewals for a total period of four (4) years. Such permits shall be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee. (3-16-04)

iii. Temporary permits for polysomnographic trainees shall be issued for a period of not more than one (1) year, the exact period to be fixed by the Board. Such permits may be renewed on their expiration date upon completion of a renewal application and upon payment of a renewal fee, for a period of one (1) year, with renewal limited to one (1) such renewal, provided however, such permits for polysomnographic trainees shall be limited to a total period of two (2) years. The Board may, in its discretion, prorate the application fees charged in conjunction with an initial application for a temporary permit if such temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. (4-11-06)

iv. Reinstatement after failure to renew. Permits canceled for nonpayment of renewal fees may be reinstated by filing a completed request for renewal with the Board and paying a reinstatement fee, and back renewal fees. (3-16-04)

v. Reapplication after failure to renew. A registered polysomnographic technologist, whose permit has been canceled for failure to renew for a period of more than two (2) years, shall be required to make application to the Board as a new applicant for a permit. A polysomnographic technician, whose permit has been canceled for failure to renew for a period of more than one (1) year, shall be required to make application to the Board as a new applicant for a permit. Temporary permits for polysomnographic trainees whose permits have been canceled for failure to renew for a period of more than six (6) months shall be required to make application to the

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Board as new applicants for permits.

(3-16-04)

vi. Continuing education. Each individual applicant for renewal of an active permit shall, on or before the expiration date of the permit, submit satisfactory proof to the Licensure Board of successful completion of not less than twelve (12) hours of approved continuing education pertaining to the provision of polysomnographic-related respiratory care per year in addition to any other requirements for renewal as adopted by the Board. The Board, as recommended by the Licensure Board, may substitute all or a portion of the coursework required in Section 032 when an applicant for renewal shows evidence of passing an approved challenge exam or of completing equivalent education as determined by the Board, as recommended by the Licensure Board, to be in full compliance with the education requirements of this chapter.

(3-16-04)

g. Conditional Permits. Any ~~individual~~ person who desires to provide polysomnography related respiratory care services as described in Section 54-4304A, Idaho Code, and this chapter and who meets the requirements of Subsection 032.03, as well as the necessary requirements in Subsections 032.05.g.i. through 032.05.g.iv., may make application for a conditional permit. Conditional permits shall be issued on or after January 1, 2004, as outlined in Section 54-4304A(8), Idaho Code, and shall be issued until the Board has adopted rules as may be required for the issuance of regular permits as provided in this chapter and has had an opportunity to process applications for such regular permits.

(~~3-16-04~~)( )

### 033. LICENSURE EXEMPTION FOR RESPIRATORY CARE PRACTITIONERS.

The Board may grant licensure exemption to a respiratory care practitioner applicant who meets the requirements set forth by Section 54-4308, Idaho Code. ~~Individuals~~ Persons requesting exempt status must provide to the Board, satisfactory proof of the existence of facts entitling the person to the exemption. Conditions for which ~~individuals~~ those persons may be granted exemptions include the following:

(~~3-16-04~~)( )

01. **Pulmonary Function Technologists.** Certified or registered pulmonary function technologists who carry out only those professional duties and function for which they have been specifically trained.

(2-23-94)

02. **Respiratory Therapy Students.** ~~Individuals~~ Persons actively attending a full-time supervised course of study in an approved educational program leading to a degree or certificate in respiratory care. This exemption shall cease to exist if the ~~individual~~ person fails to attend the approved course of study for a period of time in excess of one-hundred twenty (120) consecutive calendar days and immediately upon receipt of the degree or certificate for which such person pursued the course of study. The practice or provision of respiratory care by such ~~individuals~~ persons must be supervised by a respiratory care practitioner or licensed physician.

(~~2-23-94~~)( )

03. **Consulting and Training.** For purposes of continuing education, consulting, or training for a period not to exceed thirty (30) days in a calendar year, provided that the ~~individual~~ person meets the requirements in Section 54-4308(1)(e), Idaho Code. The practice or provision of respiratory care by such ~~individuals~~ persons must be supervised by a respiratory care practitioner or licensed physician.

(~~2-23-94~~)( )

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### **034. LICENSE EXPIRATION AND RENEWAL.**

All licenses shall be issued for a period of not less than one (1) year nor more than five (5) years, the exact period to be fixed by the Board and shall become invalid on the expiration date printed on the face of the certificate of the license unless renewed. The failure of any person to renew his renewable license shall not deprive such person of the right to renewal, except as provided for herein and Section 54-4312, Idaho Code. The Board shall collect a fee for each renewal year of a license. The Board may, in its discretion, prorate the application fees charged in conjunction with an application for initial licensure if such license shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. (4-11-06)

**01. Renewal.** Each license shall be renewed by submitting a completed request for renewal form accompanied by payment of the renewal fee to the Board and documentation that the applicant holds a current certification as a Certified Respiratory Therapist (CRT) or is currently registered as a Registered Respiratory Therapist (RRT) or is currently registered as a registered polysomnographic technologist by the Board of Registered Polysomnographic Technologists. Licenses not renewed by the expiration date shall be canceled on the expiration date. ~~(3-16-04)~~( )

**02. Reinstatement.** Licenses canceled for nonpayment of renewal fees may be reinstated by filing a completed request for renewal with the Board and paying a reinstatement fee, and back renewal fees. (3-16-04)

**03. Reapplication.** A person whose license has been canceled for a period of more than five (5) years, shall be required to make application to the Board as a new applicant for licensure. (2-23-94)

**04. Continuing Education.** Prior to renewal each applicant for renewal, reinstatement or reapplication, shall submit evidence of successfully completing no less than twelve (12) clock hours per year of continuing education acceptable to the Board. Continuing education must be germane to the practice or performance of respiratory care. Appropriate continuing professional education activities include but are not limited to, the following: (4-11-06)

a. Attending or presenting at conferences, seminars or inservice programs. (2-23-94)

b. Formal course work in Respiratory Therapy related subjects. (2-23-94)

### **035. DENIAL OR REFUSAL TO RENEW LICENSE OR PERMIT OR SUSPENSION OR REVOCATION OF LICENSE OR PERMIT.**

**01. Discipline.** A new or renewal application may be denied, and every person licensed or issued a permit pursuant to Title 54, Chapter 43, Idaho Code and these rules is subject to discipline, pursuant to the procedures and powers established by and set forth in Section 54-4312, Idaho Code; the Administrative Procedures Act, and IDAPA 22.01.07, "Rules of Practice and Procedure in Contested Cases of the Board of Medicine." (3-16-04)

**02. Impose Sanctions.** The Board, upon recommendation of the Licensing Board, may refuse to issue a license or permit, or to renew a license, or permit, or may suspend or revoke

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a license or permit, or may impose probationary conditions if the holder of a license or permit or applicant for license or permit has been found guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes, but is not limited to: (3-16-04)

a. Obtaining any license or permit by means of fraud, misrepresentation or concealment of material facts; (3-16-04)

b. Being guilty of unprofessional conduct as defined by the rules of the Board, or violating the code of ethics adopted and published by the Board, a copy of which is attached to these rules; (2-23-94)

c. Being convicted of a crime which would have a direct and adverse bearing on the ~~individual's~~ person's ability to practice or perform respiratory care or polysomnography related respiratory care competently; (~~3-16-04~~)( )

d. The unauthorized practice of medicine; (4-28-93)

e. Violating any provisions of this chapter or any of the rules promulgated by the Board under the authority of this chapter; (4-28-93)

f. Being found mentally incompetent by a court of competent jurisdiction or unfit by the Board to provide respiratory care or polysomnography related respiratory care; (3-16-04)

g. Providing respiratory care or polysomnography related respiratory care which fails to meet the standard of health care provided by other qualified respiratory therapists or respiratory therapy technicians or registered polysomnographic technologists, polysomnographic technicians or polysomnographic trainees in the same community or similar communities; (3-16-04)

h. Using any controlled substance or alcohol to the extent that use impairs the ability to practice respiratory care or polysomnography related respiratory care at an acceptable level of competency; (3-16-04)

i. Employing, directing or supervising the unlicensed practice of respiratory care or those not holding a permit to provide polysomnography related respiratory care; (3-16-04)

j. Practicing in an area of respiratory care or polysomnography related respiratory care for which the ~~individual~~ person is not trained; (~~3-16-04~~)( )

k. Failure to supervise the activities of ~~individuals~~ persons who hold exemptions, conditional or temporary permits; (~~3-16-04~~)( )

l. Delegation to an unqualified person of any services which require the skill, knowledge, and judgment of a respiratory care or polysomnography related respiratory care practitioner; (3-16-04)

m. In the case of practice as ~~an individual entitled to~~ person eligible for exemption, conditional or temporary permit, the practice of respiratory care or polysomnography related

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respiratory care other than under the supervision of a respiratory care or appropriate polysomnography related respiratory care practitioner or licensed physician, as may be required by law; ~~(3-16-04)~~( )

- n. Misrepresenting educational or experience attainments. (3-16-04)
- o. Commission of any act of sexual contact, misconduct, exploitation or intercourse with a patient or former patient or related to the licensee's or permittee's provision of respiratory care or polysomnography related respiratory care; (3-16-04)
- i. Consent of the patient shall not be a defense; (3-16-04)
- ii. Subsection 035.02.o. shall not apply to sexual contact between a respiratory care or polysomnography related respiratory care practitioner and the spouse or a person in a domestic relationship who is also a patient; (3-16-04)
- iii. A former patient includes a person for whom the respiratory care or polysomnography related respiratory care practitioner has provided respiratory care or polysomnography related respiratory care within the last twelve (12) months; (3-16-04)
- iv. Sexual or romantic relationship with a former patient beyond the period of time set forth herein may also be a violation if the respiratory care or polysomnography related respiratory care practitioner uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the patient; (3-16-04)
- p. Aiding or abetting a person not licensed, registered or permitted in this state or exempt from such licensure, registration or permitting, who directly or indirectly performs activities requiring a license, registration or permit; (3-16-04)
- q. Failing to report to the Board any known act or omission of a licensee, permittee, applicant, or any other person, that violates any provision of this chapter; (3-16-04)
- r. Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding, investigation or other legal action; or (3-16-04)
- s. Failing to maintain patient confidentiality unless otherwise required or permitted by law. (3-16-04)

**036. -- 045. (RESERVED).**

#### **046. FEES.**

Actual fees shall be set to reflect real costs of Board administration. Fees authorized under this chapter shall be used solely to carry out the purposes of this chapter including the provisions of Section 54-4317, Idaho Code. Each applicant shall be responsible for the payment of any fee charged by the National Board for Respiratory Care, Inc., Board of Registered Polysomnographic Technologists or an equivalent board, recognized by the Board. (3-16-04)

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**PENDING FEE RULE**

**01. Licensure and Permit Fees for Respiratory Care Practitioners. (3-16-04)**

**a.** Initial Licensure Fee. The fee for initial licensure, which may be prorated pursuant to Section 54-4309, Idaho Code, shall be no more than ~~ninety~~ one hundred eighty dollars (\$~~9180~~).  
(~~3-16-04~~)(    )

**b.** Reinstatement Fee. The reinstatement fee for a lapsed license shall be the renewal for each year not licensed plus a fee of ~~thirty-five~~ fifty dollars (\$~~350~~).  
(~~3-16-04~~)(    )

**c.** Inactive Fee - Reactivate Fee. The fee for converting an active license to an inactive license shall be no more than ~~fifty~~ one hundred dollars (\$~~5100~~). An inactive license may be converted to an active license to practice as a respiratory care practitioner upon written application and payment of active licensure fees for each inactive year minus paid inactive fees plus a conversion fee of no more than ~~fifty~~ one hundred dollars (\$~~5100~~) to the Board.  
(~~3-16-04~~)(    )

**d.** Renewal Fee. The renewal fee shall be no more than ~~seventy~~ one hundred forty dollars (\$~~7140~~).  
(~~3-16-04~~)(    )

**e.** Temporary Permit Fee. The fee for a temporary permit, which may be prorated pursuant to Section 54-4309, Idaho Code, shall be no more than ~~ninety~~ one hundred eighty dollars (\$~~9180~~).  
(~~4-11-06~~)(    )

**02. Permit Fees for Polysomnography Related Respiratory Care Practitioners. (3-16-04)**

**a.** Initial Permit Fee. The fee for an initial permit for a registered polysomnographic technologist or a polysomnographic technician shall be no more than ~~ninety~~ one hundred eighty dollars (\$~~9180~~). The fee for an initial permit for a polysomnographic trainee shall be no more than ~~forty-five~~ one hundred dollars (\$~~45100~~).  
(~~3-16-04~~)(    )

**b.** Reinstatement Fee. The reinstatement fee for a lapsed permit for a registered polysomnographic technologists or a polysomnographic technician shall be the renewal fee for each year not holding an active permit plus a fee of ~~thirty-five~~ fifty dollars (\$~~350~~).  
(~~3-16-04~~)(    )

**c.** Renewal Fee. The renewal fee for an active permit for a registered polysomnographic technologist and polysomnographic technician shall be no more than ~~seventy~~ one hundred forty dollars (\$~~7140~~). The renewal fee for an active permit for a polysomnographic trainee shall be no more than ~~thirty-five~~ seventy dollars (\$~~3570~~).  
(~~3-16-04~~)(    )

**d.** Temporary Permit Fee. The fee for a temporary permit, which may be prorated pursuant to Section 54-4309, Idaho Code, for a registered polysomnographic technologist and polysomnographic technician shall be no more than ~~ninety~~ one hundred eighty dollars (\$~~9180~~). The fee for a temporary permit, which may be prorated pursuant to Section 54-4309, Idaho Code, for a polysomnographic trainee shall be no more than ~~forty-five~~ ninety dollars (\$~~4590~~).  
(~~4-11-06~~)(    )



## HEALTH AND WELFARE COMMITTEE

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e. Conditional Permit Fee. The fee for a conditional permit for a registered polysomnographic technologist and polysomnographic technician shall be no more than ~~ninety~~ one hundred eighty dollars (\$9180). The fee for a conditional permit for a polysomnographic trainee shall be no more than ~~forty-five~~ ninety dollars (\$4590). Conditional permits will issue on or after January 1, 2004, and will issue until issuance of regular permits as provided in this chapter. (3-16-04)(\_\_\_\_)

### **03. Dual Licensure/Permit Fees for Practitioners of Respiratory and Polysomnography Related Respiratory Care.** (3-16-04)

a. Initial Licensure/Permit Fee. The fee for initial issuance of a dual license/permit, which may be prorated pursuant to Section 54-4309, Idaho Code, shall be no more than ~~ninety~~ one hundred eighty dollars (\$9180). A person holding a current license or permit, if qualified, may apply for and obtain a dual license/permit without paying an additional fee. (3-16-04)(\_\_\_\_)

b. Reinstatement Fee. The reinstatement fee for a dual license/permit that has lapsed shall be the renewal for each year not dually licensed/permitted plus a fee of ~~thirty-five~~ fifty dollars (\$350). (3-16-04)(\_\_\_\_)

c. Renewal Fee. The renewal fee shall be no more than ~~seventy~~ one hundred forty dollars (\$7140). Renewal shall be required upon the expiration of either the permit or the license, whichever expires first if the two (2) initially shall not have been obtained at the same time. (3-16-04)(\_\_\_\_)

### **04. General Fee Information.** (4-28-93)

a. Necessary fees shall accompany applications. (4-28-93)

b. Fees shall not be refundable. (4-28-93)

c. In those situations where the processing of an application requires extraordinary expenses, the Board may charge the applicant with reasonable fees to cover all or part of the extraordinary expenses. (4-28-93)

d. The Board may, in its discretion, provide for the proration of fees charged in conjunction with the initial application for a license or temporary permit if such license or temporary permit shall, upon issuance, remain valid for less than one (1) full calendar year before the required renewal date as provided for in Sections 54-4309 and 54-4310, Idaho Code. (4-11-06)

### **~~047. CODE OF ETHICS.~~**

~~The licensure board has adopted the Code of Ethics of the American Association for Respiratory Care, as amended in 1985.~~ (2-23-94)

**0487. -- 050. (RESERVED).**

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 23 - IDAHO STATE BOARD OF NURSING**

#### **23.01.01 - RULES OF THE IDAHO BOARD OF NURSING**

##### **DOCKET NO. 23-0101-0701 (FEE RULE)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1404 and 54-1406A, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

As an outgrowth of comments received during public meetings held across the state, text has been deleted and subsections and paragraphs renumbered:

Paragraph 492.01.b. has been deleted resulting in the renumbering of Paragraphs 492.01.c. and 492.01.d.; Subparagraph 492.04.d.i. has been amended; Subparagraph 492.04.d.xii. has been deleted resulting in the renumbering of Subparagraph 492.04.d.xiii.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 5, 2007 Idaho Administrative Bulletin, Vol. 07-9, pages 207 through 216.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 54-1404(7) and 54-1406A(4), Idaho Code.

**Fees will be imposed in connection with the licensing of medication assistant – certified.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There will be no fiscal impact on the General Fund. While fees will be charged in connection with licensing certified medication assistants, the fees will be used to offset administrative processing expenses.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions

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**IDAHO BOARD OF NURSING**  
**Rules of the Idaho Board of Nursing****Docket No. 23-0101-0701**  
**PENDING FEE RULE**

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concerning this pending rule, contact Sandra Evans, MAEd., R.N., Executive Director, (208) 334-3110 x26.

DATED this 5th day of November, 2007.

Sandra Evans, MAEd., R.N., Executive Director  
Idaho Board of Nursing  
280 N. 8th St. (8th & Bannock), Ste. 210  
P. O. Box 83720, Boise, ID 83720-0061  
Phone: (208) 334-3110 x26 / Facsimile: (208) 334-3262

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1404 and 54-1406A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**The proposed changes are needed to implement a statute passed in 2007 regulating certified medication assistants by the Board of Nursing. The proposed rules will establish qualifications for certification of medication assistants; adopt procedures for application, certification renewal, education and training criteria; and provide for competency evaluations and nurse supervision as a requirement for medication assistants. The proposed changes will also clarify grounds for discipline of a nurse for the misuse of alcohol or drugs.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

**Fees will be charged in connection with the licensing of medication assistant – certified as follows:**

- 1. Initial Application Fee By Examination: Thirty-Five Dollars (\$35);**

## HEALTH AND WELFARE COMMITTEE

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### IDAHO BOARD OF NURSING Rules of the Idaho Board of Nursing

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**PENDING FEE RULE**

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2. **Initial Application Fee By Endorsement: Forty Dollars (\$40);**
3. **Temporary Certification Fee: Twenty-Five Dollars (\$25);**
4. **Renewal of Certification Fee: Sixty-Five Dollars (\$65);**
5. **Reinstatement of Certification Fee: Fifty Dollars (\$50);**
6. **Verification of Records Fee: Thirty-Five Dollars (\$35);**
7. **Fee for Verification of Certification to Another State or Jurisdiction: Thirty Dollars (\$30); and**
8. **Fee not to exceed One Hundred Dollars (\$100) per day will be assessed for Survey and Evaluation of Medication Assistant - Certified Education Programs.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There will be no fiscal impact on the General Fund. While fees will be charged in connection with licensing certified medication assistants, the fees will be used to offset administrative processing expenses.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the statute, passed by the 2007 Legislature, was very specific as to what needed to be included in the rulemaking. Even though negotiated rulemaking was not conducted, the Board of Nursing staff will be holding meetings across the state to obtain public input on the proposed rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Sandra Evans, MAEd., R.N., Executive Director, (208) 334-3110 x26.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2007.

DATED this 31st day of July, 2007.

### ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

#### **100. GROUNDS FOR DISCIPLINE.**

**01. False Statement.** A false, fraudulent or forged statement or misrepresentation in procuring a license to practice nursing shall mean, but need not be limited to: (6-1-78)

**a.** Procuring or attempting to procure a license to practice nursing by filing forged or altered documents or credentials; or (3-15-02)

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**b.** Falsifying, misrepresenting facts or failing to verify and accurately report any and all facts submitted on any application for licensure, examination, relicensure, or reinstatement of licensure by making timely and appropriate inquiry of all jurisdictions in which licensee has made application for, or obtained, licensure or certification or engaged in the practice of nursing; or (3-15-02)

**c.** Impersonating any applicant or acting as proxy for the applicant in any examination for nurse licensure. (6-1-78)

**02. Conviction of a Felony.** Conviction of, or entry of a withheld judgment or a plea of nolo contendere to, conduct constituting a felony. (3-15-02)

**03. False or Assumed Name.** Practicing nursing under a false or assumed name shall mean, but need not be limited to, carrying out licensed nursing functions while using other than the individual's given or legal name. (3-15-02)

**04. Offense Involving Moral Turpitude.** An offense involving moral turpitude shall mean, but need not be limited to, an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (6-1-78)

**05. Gross Negligence or Recklessness.** Gross negligence or recklessness in performing nursing functions shall mean, but need not be limited to, a substantial departure from established and customary standards of care which, under similar circumstances, would have been exercised by a licensed peer; an act or an omission where there is a legal duty to act or to refrain from acting that a reasonable and prudent practitioner of nursing under same or similar facts and circumstances would have done, would have refrained from doing or would have done in a different manner and which did or could have resulted in harm or injury to a patient/client. An exercise of so slight a degree of care as to justify the belief that there was a conscious or overt disregard or indifference for the health, safety, well-being, or welfare of the public shall be considered a substantial departure from the accepted standard of care. (6-1-78)

**06. Habitual Use of Alcohol or Drugs.** Habitual use of alcoholic beverages or ~~narcotic, hypnotic, or hallucinogenic~~ drugs shall mean, but need not be limited to, the use of such substances to the extent that the nurse's judgment, skills, or abilities to provide safe and competent nursing care are impaired; or that the individual is unable to care for himself or his property or his family members because of such use; or it is determined by a qualified person that the individual is in need of medical or psychiatric care, treatment or rehabilitation or counseling because of drug or alcohol use. (~~7-1-91~~)( )

**07. Physical or Mental Unfitness.** Physical or mental unfitness to practice nursing shall mean, but need not be limited to, a court order adjudging that a licensee is mentally incompetent, or an evaluation by a qualified professional person indicating that the licensee is mentally or physically incapable of engaging in professional or practical nursing in a manner consistent with sound patient care; or uncorrected physical defect that precludes the safe performance of nursing functions. (6-1-78)

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**08. Violations of Standards of Conduct.** Violations of standards of conduct and practice adopted by the Board shall mean, but need not be limited to, any violation of those standards of conduct described in Section 101 of these rules. (3-15-02)

**09. Conduct to Deceive, Defraud or Endanger.** Conduct of a character likely to deceive, defraud, or endanger patients or the public shall include, but need not be limited to: (3-15-02)

- a. Violating the standards of conduct and practice adopted by the Board. (3-15-02)
- b. Being convicted of any crime or act substantially related to nursing practice and including but not limited to sex crimes, drug violations, acts of violence and child or adult abuse. (3-15-02)

**10. Action Against a License.** Action against a license shall mean entry of any order restricting, limiting, revoking or suspending or otherwise disciplining a license or privilege to practice nursing by any jurisdiction. A certified copy of an order entered in any jurisdiction shall be prima facie evidence of the matters contained therein. (3-15-02)

**11. Failure to Make Timely and Appropriate Inquiry.** Failing to make timely and appropriate inquiry verifying licensure status in all jurisdictions in which the applicant has ever applied for licensure, certification or privilege to practice, including those jurisdictions in which the applicant is currently or was ever licensed, or in which applicant has practiced, prior to filing any application, verification or other statement regarding licensure status with the Board. (3-15-02)

**12. Failure to Cooperate With Authorities.** Failure to cooperate with authorities in the investigation of any alleged misconduct or interfering with a Board investigation by willful misrepresentation of facts, failure to provide information on request of the Board, or the use of threats or harassment against any patient or witness to prevent them from providing evidence. (3-30-07)

**13. Patterns of Poor Practice.** Repeatedly engaging in conduct that departs from the customary standards of care. (3-30-07)

### (BREAK IN CONTINUITY OF SECTIONS)

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#### **492. MEDICATION ADMINISTRATION BY MEDICATION ASSISTANTS - CERTIFIED (MA-C).**

**01. When Tasks May Be Performed.** A medication assistant - certified may perform the delegated function of administration of medications and related tasks under the direct supervision of a licensed nurse, if: (\_\_\_\_)

- a.** The medication assistant - certified does not assume other unrelated tasks while he

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is administering drugs; and ( )

**b.** The medication is given by an approved medication route, to include: ( )

**i.** Orally, to include sublingual, buccal. ( )

**ii.** Topically. ( )

**iii.** For the eye, ear, or nose. ( )

**iv.** Vaginally. ( )

**v.** Rectally. ( )

**vi.** Transdermally. ( )

**vii.** Oral inhaler. ( )

**viii.** Established gastric (non-nasogastric) tube. ( )

**c.** The delegation does not conflict with provisions of Subsection 400.02 of these rules. ( )

**02. When Tasks Shall Not Be Performed.** A medication assistant - certified shall not perform a task involving the administration of medication if: ( )

**a.** The medication administration requires a nurse's assessment of the patient prior to or following the medication, a calculation of the dosage of the medication, or the conversion of the dosage. The provision does not restrict the medication assistant - certified from administering PRN medication to stable patients; ( )

**b.** The supervising nurse is unavailable to monitor the progress of the patient and the effect on the patient of the medication; or ( )

**c.** The patient's condition is unstable or the patient has changing nursing needs. ( )

**03. Report Medication Errors.** A medication assistant - certified who has any reason to believe that he has made an error in the administration of medication shall follow facility policy and procedure to report the possible or known error to his supervising nurse and shall assist in completing any required documentation of the medication error. ( )

**04. Medication Administration Policies.** ( )

**a.** The medication assistant - certified shall report to the supervising nurse: ( )

**i.** Signs or symptoms that appear life-threatening; ( )

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- ii. Events that appear health threatening; and ( )
- iii. Medications that produce no results or undesirable effects as reported by the patient. ( )
- b. A licensed nurse shall supervise medication assistant - certified. ( )
- c. A licensed professional nurse shall periodically review the following: ( )
  - i. Authorized provider orders; and ( )
  - ii. Patient medication records. ( )
- d. Tasks that may not be performed by the medication assistant - certified: ( )
  - i. Receive controlled substances. ( )
  - ii. Administration of parenteral or injectable medications. ( )
  - iii. Administration of any medication by nasogastric tube. ( )
  - iv. Calculate drug dosage. ( )
  - v. Destruction of medications. ( )
  - vi. Receive written or verbal medication orders. ( )
  - vii. Request initial dose medications. ( )
  - viii. Evaluate medication error reports. ( )
  - ix. Perform treatments unrelated to the administration of medications. ( )
  - x. Conduct patient assessments. ( )
  - xi. Engage in patient teaching activities. ( )
  - xii. Administer initial dose or non-routine medications when the patient's response to the medication is not predictable. ( )

#### **493. EDUCATION AND TRAINING FOR MEDICATION ASSISTANT - CERTIFIED.**

- 01. Education Program Content.** Education for medication assistant - certified shall include: ( )
- a. At least eighty (80) clock hours of didactic content in: ( )
    - i. The role of the medication assistant - certified, to include, but not be limited to,



## HEALTH AND WELFARE COMMITTEE

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medication administration as a delegated nursing function under the supervision of a licensed nurse in a setting or facility where the performance of the delegated function is not otherwise prohibited by law. ( )

ii. Fundamentals of medication administration, to include, but not be limited to, medication orders, medication storage, measurement, forms of medications, preparation of medications, role of the medication assistant - certified, and role of the delegating nurse. ( )

iii. Safety factors in administering medications, to include, but not be limited to, rights of medication administration, prevention of medication errors, and reporting medication errors. ( )

iv. Communication and documentation, to include, but not be limited to, communication process, boundaries, reporting symptoms and side effects, reporting deviations from normal, and documenting medication administration. ( )

v. Medication administration, to include, but not be limited to, routes of administration, factors affecting how the body responds to medications, and classes of medications. ( )

vi. Ethical and legal issues, to include, but not be limited to, responsibility of the medication assistant - certified, patient rights, patient self-administration of medications, and ethical and legal violations. ( )

b. At least forty (40) clock hours of correlated supervised practicum in medication administration. ( )

**02. Board Approval.** Programs preparing medication assistant - certified must be approved by the Board. ( )

a. Institutions applying for initial approval must make application to the Board on forms supplied by the Board. The following information must be included: ( )

i. Accreditation status, relationship of educational program to parent institution. ( )

ii. Curriculum to be used. ( )

iii. Clinical sites to be used. ( )

iv. Provision for qualified faculty. ( )

b. Provisional approval for one (1) year will be granted to programs on initial application that provide evidence that Board-approved training standards will be met. ( )

c. Programs with provisional approval must apply for full approval on forms supplied by the Board and submit such application to the Board office one (1) month prior to the expiration of provisional approval. ( )

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**d.** A representative of the Board shall visit the program one (1) year following initial provisional approval and submit a written report to the Board. ( )

**i.** Following the Board's review of the visit report, the institution shall be notified of the Board's decision within thirty (30) days of the review. ( )

**ii.** Following its review, the Board may grant full approval, if all conditions have been met; or conditional approval, if all conditions have not been met; or denial of approval if, conditions have not been met and the institution can provide no indication that they will be met within a reasonable timeframe. ( )

**e.** A letter of continuing approval will be granted annually to programs that substantially meet the Board's requirements, as evidenced by: ( )

**i.** Information included in annual reports to the Board; and ( )

**ii.** Information obtained by Board representative during on-site visits. ( )

**03. Administration of Program.** The educational program shall be administered by an educational institution accredited by an organization recognized by the U.S. Department of Education. ( )

**04. Medication Assistant - Certified Program Requirements.** An educational program preparing medication assistant - certified shall: ( )

**a.** Provide evidence of financial support and resources adequate to achieve the purpose of the program, to include, but not limited to, classrooms, laboratories, equipment, supplies, and qualified administrative, instructional, and support personnel and services. ( )

**b.** Maintain current and final records for each student enrolled in the program in accordance with policies of the parent institution. ( )

**c.** Provide sufficient numbers of qualified faculty to implement the curriculum. ( )

**d.** Provide sufficient numbers of faculty in the clinical setting to assure patient safety and meet student learning needs. ( )

**e.** Use a curriculum approved by the Board that includes didactic content and supervised clinical as defined in Subsection 493.01 of these rules. ( )

**05. Program Administrator.** Medication assistant - certified program administrator shall meet institutional requirements for the position. ( )

**06. Program Instructors.** Medication assistant - certified instructors shall: ( )

**a.** Hold a current, unencumbered license to practice as a professional nurse in Idaho.

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- ( )
- b.** Have a minimum of two (2) years practice experience in a health care facility. ( )
- c.** Have at least one (1) year clinical experience relevant to areas of teaching responsibility. ( )
- d.** Provide documented evidence of preparation for teaching adults. ( )
- 07. Instructor Responsibilities.** Medication assistant-certified instructor responsibilities are the same as those identified in Subsection 644.01 of these rules. ( )
- 08. Program Changes.** Board approval is required to make substantive changes in an approved medication assistant - certified training program. The program provider shall submit a description of the proposed change in curriculum or other substantive change to the Board for review at least sixty (60) days before the program provider plans to implement the changes. The Board will notify the provider in writing of its decision. ( )
- 09. Periodic Training Program Evaluation.** To insure compliance with the requirements for medication assistant - certified programs: ( )
- a.** Each program shall submit a report annually regarding the program's operation and compliance with the Board rules. ( )
- b.** Each program shall be on-site surveyed by representatives of the Board and evaluated for ongoing approval every four (4) years or as requested by the Board. ( )
- c.** A copy of the survey visit report will be made available to the education and training program. ( )
- 10. Withdrawal of Approval.** ( )
- a.** The Board shall withdraw approval of medication assistant - certified education and training programs when the Board determines that there is not sufficient evidence that the program is meeting requirements. ( )
- b.** The Board shall provide due process rights and adhere to the procedures of the Idaho Administrative Procedures Act, providing notice, opportunity for hearing, and correction of deficiencies. ( )
- c.** The Board may consider reinstatement or approval of an educational program upon submission of satisfactory evidence that the program meets the requirements. ( )
- 11. Closing of Education Programs.** When a person or entity plans to discontinue offering an education program, it shall comply with the requirements set forth at Section 604 of these rules. ( )

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### IDAHO BOARD OF NURSING Rules of the Idaho Board of Nursing

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#### **494. APPLICATION FOR CERTIFICATION FOR MEDICATION ASSISTANT - CERTIFIED.**

**01. Application Submission.** An applicant for medication assistant - certified shall submit to the Board: ( )

**a.** A completed, notarized application form provided by the Board; and ( )

**b.** A notarized affidavit of graduation from an approved medication assistant - certified education and training program; and ( )

**c.** Evidence of successful completion of a medication assistant - certified competency evaluation, approved by the Board; and ( )

**d.** Payment of application fees as established in Section 497 of these rules; and ( )

**e.** Applicant's current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

**02. Temporary Certification.** ( )

**a.** At the Board's discretion, a temporary certification may be issued to an applicant who meets all other requirements and is waiting for the federal criminal background report. ( )

**b.** Temporary certification is valid for six (6) months from the date of issuance or until a permanent certification is issued or denied, whichever occurs first. ( )

**c.** The applicant must pay the temporary certification fee established in Section 498 of these rules. ( )

**03. Denial of Certification.** Certification as a medication assistant - certified may be denied for any of the following grounds: ( )

**a.** Failure to meet any requirement established by statute or these rules; or ( )

**b.** Failure to pass the certification examination; or ( )

**c.** False representation of facts on an application for certification; or ( )

**d.** Having another person appear in his place for the certification examination; or ( )

**e.** Engaging in any conduct which would be grounds for discipline under Section 54-1406A, Idaho Code, or these rules; or ( )

**f.** Revocation, suspension, limitation, reprimand, voluntary surrender, or any other disciplinary action or proceeding including investigation against a certificate to practice by another state or jurisdiction. ( )

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**04. Notification.** If certification is denied, the Board will notify the applicant in writing of the reason for denial and inform him of his procedural rights under the Idaho Administrative Procedures Act. ( )

#### **495. CERTIFICATION RENEWAL FOR MEDICATION ASSISTANT - CERTIFIED.**

**01. Renewal Time.** Certifications of medication assistants - certified must be renewed every two (2) years. ( )

**02. Renewal Application.** A renewal application will be provided by the Board to persons certified under these rules. The application will be either mailed to the applicant's address on record with the Board no later than one (1) month before expiration of the certification, or be available to applicants on the Board's website. ( )

**03. Final Date to Renew.** The original signed renewal application and renewal fees, as establish in Section 497 of these rules, must be submitted to the Board by personal delivery or postmarked no later than August 31 of every even-numbered year. ( )

**04. Attestation of Good Standing.** Along with the renewal application and applicable fees, the applicant must submit evidence that he is currently listed in good standing on the state's certified nurse aide registry and has been employed as a medication assistant - certified within the preceding twenty-four (24) month period. ( )

**05. Date Certification Lapsed.** Certifications not renewed prior to September 1 of the appropriate year will automatically lapse and be invalid. ( )

#### **496. REINSTATEMENT OF CERTIFICATION.**

**01. Within One Year.** A person whose certificate has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement within one (1) year by: ( )

**a.** Filing a completed renewal application; and ( )

**b.** Payment of the verification of records fee and the reinstatement fee as prescribed in Section 498 of these rules. ( )

**02. After One Year.** After one (1) year, but less than three (3) years, a person whose certificate has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement by: ( )

**a.** Filing a completed reinstatement application; and ( )

**b.** Payment of the fees prescribed in Section 497 of these rules; and ( )

**c.** Providing evidence satisfactory to the Board of the applicant's ability to practice safely and competently. ( )

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d. A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

**03. After Three Years.** After three (3) years, a person whose certificate has lapsed for failure to timely pay the renewal fee may apply for reinstatement by: ( )

a. Filing a completed reinstatement application; and ( )

b. Payment of the fees prescribed in Section 497 of these rules; and ( )

c. Payment of the temporary certification fee prescribed in Section 497 of these rules, if required; and ( )

d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. ( )

e. A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

**04. After Discipline.** A person whose certificate has been subject to disciplinary action by the Board may apply for reinstatement of the certificate to active and unrestricted status by: ( )

a. Submitting a completed application for reinstatement; and ( )

b. Payment of the fees prescribed in Section 497 of these rules; and ( )

c. Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement; and ( )

d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. ( )

e. A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

f. A person whose certificate has been revoked may not apply for reinstatement until two (2) years following the order of revocation. ( )

### **497. FEES APPLICABLE TO MEDICATION ASSISTANT - CERTIFIED AND THE CERTIFICATION PROCESS.**

The applicable fees are as follows: ( )

**01. Initial Fee By Examination.** The initial application fee for medication assistant - certified, by examination: thirty-five dollars (\$35). ( )

**02. Initial Fee By Endorsement.** The initial application fee for medication assistant - certified, by endorsement: forty dollars (\$40). ( )

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- 03. Temporary.** Temporary certification fee: twenty-five dollars (\$25). ( )
- 04. Renewal.** Renewal of certification fee: sixty-five dollars (\$65). ( )
- 05. Reinstatement.** Reinstatement of certification fee: fifty dollars (\$50). ( )
- 06. Records.** Verification of records fee: thirty-five dollars (\$35). ( )
- 07. Verification.** Fee for verification of certification to another state or jurisdiction: thirty dollars (\$30). ( )

**08. Evaluation of Education Programs.** A fee not to exceed one hundred dollars (\$100) per day will be assessed for survey and evaluation of medication assistant - certified education programs, which will be due at the time the evaluation is requested. ( )

### **498. CHANGES IN NAME AND ADDRESS FOR NOTIFICATION PURPOSES.**

**01. Change of Name.** Whenever a change of certificate holder name occurs, the Board must be immediately notified of the change. Documentation confirming the change of name must be provided to the Board on request. ( )

**02. Change of Address.** Whenever a change of certificate holder mailing address occurs, the Board must be immediately notified of the change. ( )

**03. Address for Notification Purposes.** The most recent mailing address on record with the Board will be utilized for purposes of all written communication with the certificate holder including, but not limited to, notification of renewal and notices related to disciplinary actions. ( )

**~~4929.~~ -- 599. (RESERVED).**

## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

#### **24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS**

##### **DOCKET NO. 24-1501-0701 (FEE RULE)**

##### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-3404, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 144 through 151.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-3411, Idaho Code:

**This change would set renewal fees for inactive status at \$50 and senior status at \$60 which is a reduction of the current renewal fee of \$100.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 26th day of October, 2007.

Tana Cory, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Ste 220, Boise, ID 83709  
(208) 334-3233 phone / (208) 334-3945 fax



## HEALTH AND WELFARE COMMITTEE

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**BUREAU OF OCCUPATIONAL LICENSES**  
**Professional Counselors/Marriage/Family Therapists Board**

**Docket No. 24-1501-0701**  
**PENDING FEE RULE**

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### ***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-3404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**To clarify the qualifications for professional counselor license, update accrediting bodies for correct titles, clarify supervision requirements for marriage and family therapists, clarify that interns must be registered prior to commencement of supervised experience, add renewal fees for inactive license status and senior status, clarify endorsement continuing education, create inactive status and senior status, and clarify continuing education exemption for inactive status.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

**There could be an impact on dedicated funds which is dependant on the number of licensees requesting inactive or senior status. Current renewal fees are \$100. Inactive status would be \$50 and Senior status would be \$60, so there would be a minimal decrease in revenues for the board.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

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**BUREAU OF OCCUPATIONAL LICENSES**  
**Professional Counselors/Marriage/Family Therapists Board**

**Docket No. 24-1501-0701**  
**PENDING FEE RULE**

DATED this 15th day of August, 2007.

### ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

#### **150. QUALIFICATIONS FOR PROFESSIONAL COUNSELOR LICENSURE (RULE 150).**

Licensure as a “professional counselor” shall be restricted to persons who have successfully completed the required examination and each of the following requirements: (3-30-06)

**01. Graduate Program Requirement.** A planned graduate program of sixty (60) semester hours which is primarily counseling in nature, six (6) semester hours of which are earned in an advanced counseling practicum, and including a graduate degree in a counseling field from an accredited university or college offering a graduate program in counseling. (7-1-93)

**a.** A planned graduate program in a counseling field shall be defined as completion of one (1) of the following: (7-1-93)

~~i. A counseling program accredited or approved by the National Council for accreditation of Teacher Education or a counseling program listed in the Interstate List of Approved Programs; or~~ (7-1-93)

~~ii.~~ A counseling program approved by the Council for Accreditation of Counseling and Related Educational Programs; or (7-1-93)

~~iii.~~ A counseling program approved by the Council on Rehabilitation Education; or (7-1-93)

~~iv.~~ A counseling program approved by the Board which shows evidence of education in the following areas: Counseling Theory, Counseling Techniques and Supervised Counseling Experience (this practicum must be supervised at the ratio of at least one (1) hour of one-to-one supervision for every ten (10) hours of experience in the setting) and a minimum of one graduate level course in at least six (6) of the following eight (8) areas: (7-1-93)( )

(1) Human growth and development: Includes studies that provide a broad understanding of the nature and needs of individuals at all developmental levels. Emphasis is placed on psychological, sociological, and physiological approaches. Also included are areas such as human behavior (normal and abnormal), personality theory, and learning theory. (7-1-93)

(2) Social and cultural foundations: Includes studies of change, ethnic groups, subcultures, changing roles of women, sexism, urban and rural societies, population patterns, cultural mores, use of leisure time, and differing life patterns. (7-1-93)

(3) The helping relationship: Includes philosophic bases of the helping relationship: Consultation theory and/or an emphasis on the development of counselor and client (or consultee) self-awareness and self-understanding. (7-1-93)

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(4) Groups: Includes theory and types of groups, as well as descriptions of group practices, methods dynamics, and facilitative skills. It includes either a supervised practice and/or a group experience. (7-1-93)

(5) Life-style and career development: Includes areas such as vocational-choice theory, relationship between career choice and life-style, sources of occupational and educational information, approaches to career decision-making processes, and career-development exploration techniques. (7-1-93)

(6) Appraisal of the individual: Includes the development of a framework for understanding the individual, including methods of data gathering and interpretation, individual and group testing, case-study approaches and the study of individual differences. Ethnic, cultural, and sex factors are also considered. (7-1-93)

(7) Research and evaluation: Includes areas such as statistics, research design, and development of research and demonstration proposals. It also includes understanding legislation relating to the development of research, program development, and demonstration proposals, as well as the development and evaluation of program objectives. (7-1-93)

(8) Professional orientation: Includes goals and objectives of professional counseling organizations, codes of ethics, legal consideration, standards of preparation, certification, and licensing and role of identity of counselors. (7-1-93)

b. A total of at least sixty (60) graduate semester hours or ninety (90) graduate quarter hours shall be required. (7-1-93)

c. Advanced counseling practicum shall be practica taken at the graduate school level. (7-1-93)

d. A graduate degree shall be one of the following beyond the baccalaureate level: The master's degree, the educational specialist certificate or degree, or the doctor's degree. (7-1-93)

e. An accredited university or college shall be a college or university accredited by one (1) of the following: the Middle States Association of Colleges and ~~Secondary~~ Schools, the New England ~~State~~ Association of ~~Colleges and Secondary~~ Schools and Colleges, the North Central Association of Colleges and ~~Secondary~~ Schools, the Northwest Association of ~~Colleges and Secondary~~ Schools and of Colleges and Universities, the Southern Association of Colleges and ~~Secondary~~ Schools, or the Western ~~College~~ Association of Schools and Colleges. (7-1-93)( )

**02. Supervised Experience Requirement.** One thousand (1,000) hours of supervised experience in counseling acceptable to the Board. (7-1-93)

a. One thousand (1,000) hours is defined as one thousand (1,000) clock hours of experience working in a counseling setting, four hundred (400) hours of which shall be direct client contact. Supervised experience in practica and/or internships taken at the graduate level

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may be utilized. The supervised experience shall include a minimum of one (1) hour of face-to-face or one-to-one (1/1) or one-to-two (1/2) consultation with the supervisor for every twenty (20) hours of job/internship experience. Face-to-face may include a face-to-face setting provided by a live video connection between the supervisor and supervisee. As stated under Subsection 150.01.a.iv. counseling practicum experience as opposed to job or internship experience shall be supervised at a ratio of one (1) hour of supervision for every ten (10) hours in the settings. For example: (3-30-06)

i. A person in a twenty (20) hour per week job/internship who is receiving one (1) hour of individual supervision each week would accumulate one thousand (1,000) supervised hours in fifty (50) weeks to equal the twenty to one (20/1) ratio. (7-1-93)

ii. A person in a forty (40) hour per week setting with one (1) hour of supervision per week would still require fifty (50) weeks to equal the twenty to one (20/1) ratio. (7-1-93)

iii. A person in a forty (40) hour per week setting with two (2) hours of supervision per week would accumulate the one thousand (1,000) hours at the twenty to one (20/1) supervision ratio in twenty-five (25) weeks. (7-1-93)

**b.** Until July 1, 2004, the supervision must be provided by a Professional Counselor or a Clinical Professional Counselor licensed by the state of Idaho. Effective July 1, 2004, postgraduate supervision must be provided by a Professional Counselor, a Clinical Professional Counselor or a Marriage and Family Therapist licensed by the state of Idaho and registered with the Board as a Supervisor. If the applicant's supervision was provided in another state, it must have been provided by a counseling professional licensed by that state, provided the requirements for licensure in that state are substantially equivalent to the requirements of Title 54, Chapter 34, Idaho Code. If supervision was obtained prior to July 1, 1988, or in a state that does not regulate counseling, that supervision must have been provided by a qualified counselor educator as a part of a planned graduate program or by a person who holds a graduate degree beyond the baccalaureate level who is certified and/or licensed as a counselor, social worker, psychologist, or psychiatrist. Supervision by an administrative superior who is not in a counseling related profession is not acceptable to the Board. Supervision by a professional counseling peer, however, may be acceptable to the Board if the peer/supervisory relationship includes the same controls and procedures expected in an internship setting. (See Subsection 150.02.a.) For example, the relationship should include the staffing of cases, the critiquing of counseling tapes and this supervision must be conducted in a formal, professional, consistent manner on a regularly scheduled basis. (3-30-06)

**c.** Experience in counseling is defined as assisting individuals or groups, through the counseling relationship, to develop an understanding of personal problems, to define goals, and to plan action reflecting interests, abilities, aptitudes, and needs as related to persona-social concerns, educational progress, and occupations and careers. Counseling experience may include the use of appraisal instruments, referral activities, and research findings. (7-1-93)

**d.** The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

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### (BREAK IN CONTINUITY OF SECTIONS)

#### **238. MARRIAGE AND FAMILY THERAPISTS (RULE 238).**

The following requirements must be met for marriage and family therapist licensure: (3-13-02)

**01. Graduate Degree.** Possess a graduate degree as outlined in Section 54-3405C(1), Idaho Code. (3-13-02)

**02. Practicum.** Must meet the requirements as outlined in Section 54-3405C(2), Idaho Code. (3-13-02)

**03. Supervised Marriage and Family Therapy Experience.** Must meet the three thousand (3,000) hour requirement as outlined in Section 54-3405C(3), Idaho Code. Effective July 1, 2004, a Marriage and Family Therapist must be registered with the Board to provide post graduate supervision. (4-2-03)

**a.** A minimum of two thousand (2,000) postgraduate direct client contact hours, in no less than a two (2) year time period shall include; (3-13-02)

**i.** A minimum one thousand (1,000) direct client contact hours with couples and families; and (3-13-02)

**ii.** Two hundred (200) hours of supervision. (3-13-02)

**b.** Supervision ~~must~~ may be obtained from a registered marriage and family therapist supervisor, ~~or~~ Supervision may also be obtained from a licensed clinical professional counselor registered with the Board, licensed psychologist, licensed clinical social worker registered with the Board of Social Work Examiners, or licensed psychiatrist who documents: ~~(3-30-07)~~(\_\_\_\_)

**i.** A minimum of five (5) years of experience providing marriage and family therapy; and (3-20-04)

**ii.** Fifteen (15) contact hours of education in supervisor training; and (3-20-04)

**iii.** Has not been the subject of any disciplinary action for five (5) years immediately prior to providing supervision. (3-20-04)

**c.** No more than one hundred (100) hours of group supervision shall be allowed. Group supervision shall be defined as no more than six (6) supervisees per each supervisor; and (3-13-02)

**d.** Individual supervision is defined as up to two (2) supervisees per supervisor; and (3-13-02)

**e.** Supervision must employ the use of audio technologies or video technologies or co-therapy, or live supervision; and (3-13-02)

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f. In accordance with the adopted Codes of Ethics prohibiting dual relationships, a supervisor shall not act as an applicant's personal Professional Counselor/Therapist. (3-13-02)

g. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

#### 04. Examination. (3-13-02)

a. The Board requires successful passage of the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB). (3-13-02)

b. The examination will be conducted at a time and place specified by the Board. (3-13-02)

c. Successful passage of the examination is defined by the Board as achievement of the passing score set by the AMFTRB. Reexamination shall consist of the entire examination. (3-13-02)

### (BREAK IN CONTINUITY OF SECTIONS)

#### 245. REGISTERED INTERNS (RULE 245).

An individual pursuing Idaho licensure as a Professional Counselor may register with the Board as an Intern. An individual pursuing Idaho licensure as a Marriage and Family Therapist shall register prior to commencement of supervised experience with the Board as an Intern in compliance with section 54-3402, Idaho Code. (~~4-2-03~~)(\_\_\_\_)

#### 01. Requirements for Registration. (4-2-03)

a. Possess a graduate degree in counseling, marriage and family therapy, or a closely related field from an accredited university or college. (4-2-03)

b. Be actively pursuing postgraduate supervised experience. (4-2-03)

c. Designate a supervisor who is registered as a supervisor or who is otherwise approved to provide marriage and family therapy supervision as defined in Section 54-3405C, Idaho Code, and who shall be responsible to provide supervision. (3-20-04)

02. **Registration.** An individual applying for registration as a Counselor Intern or Marriage and Family Therapist Intern shall fully complete the application form as established by the Board and submit the designated fee as adopted by Board rule. (4-2-03)

#### 03. Practice. (4-2-03)

a. A Registered Intern may only practice counseling or marriage and family therapy

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under the direct supervision of a Counselor Supervisor or Marriage and Family Therapist Supervisor who shall be responsible to ensure that a Registered Intern is competent to practice such counseling or marriage and family therapy as may be provided. (4-2-03)

**b.** Only a Registered Intern may use the title Counselor Intern or Marriage and Family Therapist Intern. (4-2-03)

**c.** An individual shall not practice as an intern for more than four (4) years from the original date of registration. (4-2-03)

**246. -- 249. (RESERVED).**

**250. FEES (RULE 250).**

**01. Application Fee.** Application fee: (7-1-97)

**a.** Professional Counselor -- seventy-five dollars (\$75). (3-13-02)

**b.** Clinical Professional Counselor -- seventy-five dollars (\$75). (3-13-02)

**c.** Marriage and Family Therapist -- seventy-five dollars (\$75). (3-13-02)

**d.** Intern Registration -- twenty-five dollars (\$25). (4-2-03)

**02. Professional Counselor and Marriage and Family Therapist Examination or Reexamination Fee.** The Professional Counselor and Marriage and Family Therapist license examination or reexamination fee shall be the fee as set by the provider of the approved examination plus an administration fee of twenty-five dollars (\$25). (3-30-06)

**03. Original License Fee.** Original license fee for Professional Counselor or Clinical Professional Counselor or Marriage and Family Therapist -- seventy-five dollars (\$75). (4-6-05)

**04. Annual Renewal Fee.** Annual license renewal fee for Professional Counselor, Clinical Professional Counselor, or Marriage and Family Therapist -- one hundred dollars (\$100). (3-19-07)

**05. Annual Renewal Fee for Inactive License.** Annual license renewal fee for inactive Professional Counselor, Clinical Professional Counselor, or Marriage and Family Therapist -- fifty dollars (\$50). ( )

**06. Annual Renewal Fee for Senior Status.** Annual license renewal fee for senior Professional Counselor, Clinical Professional Counselor, or Marriage and Family Therapist -- sixty dollars (\$60). ( )

**057. Fees are Non-Refundable.** All fees are non-refundable. (7-1-93)

**251. -- 299. (RESERVED).**

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#### **300. ENDORSEMENT (RULE 300).**

The Board may grant a license to any person who submits a completed application on a form approved by the board together with the required fees and who: (3-13-02)

**01. Holds a Current License.** The applicant must be the holder of a current active license, in the profession for which a license is being sought, issued by the authorized regulatory entity in another state or country, the certification of which must be received directly by the board from the issuing agency; and (3-13-02)

**02. Has Not Been Disciplined.** The applicant must certify they have not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (3-13-02)

**03. Is of Good Moral Character.** The applicant must certify they are of good moral character and have not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and (3-13-02)

**04. Has Documented Experience.** The applicant must provide a documented record of at least five (5) years actual practice under licensure immediately prior to application in the profession for which a license is being sought, or can demonstrate hardship or extenuating circumstances that prohibited practice during a portion of the five (5) year period as determined by the board; and (3-13-02)

**05. Will Abide by Laws, Rules and Code of Ethics.** The applicant must certify under oath to abide by the laws and rules governing the practice of counseling and marriage and family therapy in Idaho and the applicable code of ethics as adopted; and either (3-30-07)

**06. National Credential Registry.** If applicant has been granted credentials by the American Association of State Counseling Boards as qualifying for Category II of the national credential registry or any such similar qualification granted by a national credentialing entity otherwise approved by the Board; or (3-30-07)

**07. Provides Information.** The applicant must document at least three (3) of the following during the five (5) years immediately prior to application: (3-13-02)

- a.** A minimum of one thousand (1,000) hours client contact; (3-13-02)
- b.** Service as an officer of a state or national counseling or marriage and family therapy organization, or a member of a state or national counseling or marriage and family therapy board or committee, or other leadership positions as may be approved by the Board; (3-13-02)
- c.** Teaching at least three (3) graduate courses for credit at an accredited college or university; (3-13-02)
- d.** A certificate to supervise issued by the NBCC or AAMFT; (3-13-02)



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- e. Providing at least twelve (12) months of supervision to each of no less than three (3) persons seeking licensure; (3-13-02)
- f. Maintained professional liability insurance for the previous five (5) years with proof of no claims filed; (3-13-02)
- g. Obtained a post graduate degree in a field of study related to counseling or marriage and family therapy that is in addition to the minimum licensure requirements; (3-13-02)
- h. Current certification by a national credentialing entity as approved by the Board in the discipline for which licensure is sought; (3-13-02)
- i. ~~Twenty (20)~~ A total of one hundred (100) hours of continuing education ~~per year~~ for completed in the five (5) years immediately prior to application. (3-13-02)( )

### (BREAK IN CONTINUITY OF SECTIONS)

**351. -- 3959. (RESERVED).**

### **360. INACTIVE STATUS (RULE 360).**

**01. Request for Inactive Status.** Each person requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. ( )

**02. Inactive License Status.** ( )

**a.** All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho. ( )

**b.** Inactive license renewal notices and licenses will be marked "Inactive." ( )

**c.** When the licensee desires active status, he must show acceptable fulfillment of continuing education requirements for the previous twelve (12) months and submit a fee equivalent to the difference between the inactive and active renewal fee. ( )

**d.** Licensees shall not practice in Idaho as a Professional Counselor, Clinical Professional Counselor or a Marriage and Family Therapist while on inactive status. ( )

**361. -- 374. (RESERVED).**

### **375. SENIOR STATUS (RULE 375).**

**01. Request for Senior Status.** Each person having attained the age of sixty-five (65) and requesting a senior status during the renewal of their active license must submit a written

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request and pay the established fee. ( )

**02. Continuing Education.** Continuing education must be completed annually per Section 425 of this rule. ( )

**376. -- 399. (RESERVED).**

### (BREAK IN CONTINUITY OF SECTIONS)

#### **425. CONTINUING EDUCATION (RULE 425).**

Every person holding an Idaho license as a Professional Counselor, Clinical Professional Counselor or a Marriage and Family Therapist must annually complete twenty (20) contact hours of continuing education prior to license renewal. (3-30-06)

**01. Contact Hours.** The contact hours of continuing education shall be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. No less than three (3) contact hours for each renewal period shall be in ethics. (3-30-06)

**02. Documentation of Attendance.** It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the applicant. This documentation must be maintained by the applicant and provided to the Board upon request by the Board or its agent. (4-2-03)

**03. Excess Hours.** Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date may be applied toward meeting the continuing education requirement for the next license renewal. No more than five (5) hours in excess of the required twenty (20) hours shall be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. (4-2-03)

**04. Compliance Audit.** The Board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the Board of meeting the continuing education requirement be submitted to the Bureau. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action in accordance with section 54-3407, Idaho Code. (4-2-03)

**05. Special Exemption.** The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. There is no continuing education required of those holding a current inactive license. (~~4-6-05~~)( )

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### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

#### **24.24.01 - RULES OF THE BOARD OF NATUROPATHIC MEDICAL EXAMINERS**

##### **DOCKET NO. 24-2401-0701 (NEW CHAPTER - FEE RULE)**

##### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, rejected, amended or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-5109, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The agency has adopted the pending rule in order to implement the statutory directives for licensure of naturopaths in the state of Idaho. Pursuant to Section 67-5227, Idaho Code, and in response to public testimony and written comments received, the agency has amended several sections with content different from that originally proposed.

Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 3, 2007 Idaho Administrative Bulletin, Vol. 7-10, Book 2, pages 174 through 183.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-5111, Idaho Code:

**The rule will establish fees for application, original license, and renewal of license.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Dr. Laurence Hicks at (208) 733-4444.

DATED this 14th day of November 2007.

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**Rules of the Board of Naturopathic Medical Examiners**

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**PENDING FEE RULE**

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Dr. Laurence Hicks, Chairman  
153 Blue Lakes Blvd. North  
Twin Falls, ID 83301  
(208) 733-4444  
(208) 733-4456 fax

### ***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-5109, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

October 23, 2007 -- 8:30 a.m. to 11:30 a.m.  
Bureau of Occupational Licenses  
1109 Main St., Suite 220, Boise, ID

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**The rules provide contact information, definitions, provide an application, provide for fees, allow for renewal of registrations, set standards for continuing education, defines scope of practice, and defines approved schools and examinations.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

**These rules would set fees for application, license, and renewal allowed in Section 54-5111, Idaho Code.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the July 4, 2007, Idaho Administrative Bulletin, Volume 07-7, page number 70.

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**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Laurence Hicks at (208) 733-4444.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 22nd day of August, 2007.

### ***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

#### **IDAPA 24 TITLE 24 CHAPTER 01**

#### **24.24.01 - RULES OF THE BOARD OF NATUROPATHIC MEDICAL EXAMINERS**

##### **000. LEGAL AUTHORITY (RULE 0).**

Pursuant to Sections 54-5103, 54-5104, 54-5105, and 54-5109, Idaho Code, the Idaho Board of Naturopathic Medical Examiners (IBNME) is authorized to promulgate rules to govern the practice of Naturopathic Medicine in Idaho. ( )

##### **001. TITLE AND SCOPE (RULE 1).**

These rules shall be cited as IDAPA 24.24.01, "Rules of the Board of Naturopathic Medical Examiners." ( )

##### **002. WRITTEN INTERPRETATIONS (RULE 2).**

The Board may have written statements that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. ( )

##### **003. ADMINISTRATIVE APPEALS (RULE 3).**

All contested cases shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General." ( )

##### **004. INCORPORATION BY REFERENCE (RULE 4).**

*01. Incorporated Documents. IDAPA 24.24.01 adopts and incorporates by reference the following documents:* ( )

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### BUREAU OF OCCUPATIONAL LICENSES Rules of the Board of Naturopathic Medical Examiners

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*a. The United States Pharmacopeia-National Formulary, ISBN-13: 9789997013743, publication date May 2007. ( )*

*b. Homeopathic Pharmacopeia of the United States. This document has been in continuous publication since 1897 and a subscription can be obtained from the Revision Service. ( )*

*c. Drug Facts & Comparisons 2008, ISBN-13: 9781574392722, publication date October 2007. ( )*

*d. PDR for Herbal Medicines, ISBN-13: 9781563636783, publication date September 2007. ( )*

**02. Availability of Referenced Documents.** Copies of the documents listed in Section IDAPA 004.01 of these rules are available at the Board office. ( )

### **005. ADDRESS OF IDAHO BOARD OF NATUROPATHIC MEDICAL EXAMINERS (RULE 5).**

The central office of the Idaho Board of Naturopathic Medical Examiners is located within the Bureau of Occupational Licenses. The Board's mailing address is Idaho Board of Naturopathic Medical Examiners, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The telephone number of the Board is (208)334-3233. The Board's facsimile (FAX) number is (208)334-3945. The Board's web site is at [www.ibol.idaho.gov/nat.htm](http://www.ibol.idaho.gov/nat.htm). The Board's office is open from 8 a.m. to 5 p.m. Mountain time, except Saturday, Sunday, and legal holidays. ( )

### **006. PUBLIC RECORDS ACT COMPLIANCE (RULE 6).**

The records associated with the Board of Naturopathic Medical Examiners are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

### **007. FILING OF DOCUMENTS (RULE 7).**

Originals of all documents must be filed with the Board. ( )

### **008. -- 009. (RESERVED).**

### **010. DEFINITIONS (RULE 10).**

**01. Act or NPLA.** The Naturopathic Physicians Licensing Act. Title 54, Chapter 51, Idaho Code. ( )

**02. Applicant.** Any person seeking a license to practice naturopathic medicine from the Board. ( )

**03. Board.** The Idaho Board of Naturopathic Medical Examiners as prescribed in Section 54-5108, Idaho Code. ( )

**04. Bureau.** The Bureau of Occupational Licenses as prescribed in Section 67-2602, Idaho Code. ( )

## HEALTH AND WELFARE COMMITTEE

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### **BUREAU OF OCCUPATIONAL LICENSES** **Rules of the Board of Naturopathic Medical Examiners**

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**05. Environmental Medicine.** Environmental Medicine explores the role of dietary and environmental allergens in health and illness. Environmental medicine addresses the elimination of toxic substances in the body, the body's ability to process new environmental insults, and lifestyle changes to avoid future problems. ( )

**06. Former Patient.** A former patient includes a patient for whom the physician has not provided medical services or prescriptions within the last eighteen (18) months. ( )

**07. License to Practice Naturopathic Medicine.** A license issued by the Board to practice naturopathic medicine in Idaho. ( )

**08. Mechanotherapy.** The treatment of disease by manual, physical, electrical, or mechanical means. Mechanotherapy excludes chiropractic adjustment as defined in Section 54-704, Idaho Code, or physical therapy as defined in Section 54-2203, Idaho Code. ( )

**09. Meridian Therapy.** Meridian therapy is the treatment of the body's energy pathways by manual, electrical, physical, or mechanical means. Meridian therapy does not involve insertion of acupuncture needles. ( )

**10. Naturopathic Medical Formulary Council.** That council created and consisting of naturopathic physicians, pharmacists, and medical physicians pursuant to Section 54-5110, Idaho Code. The council, once appointed and formed, must specifically include in the naturopathic medical formulary those prescription drugs and/or medical devices that a naturopathic physician will be allowed to dispense, administer, adjust or prescribe. ( )

**11. Naturopathic Medicine.** Naturopathic medicine allows naturopathic physicians to provide all natural health care services as defined in Section 54-5102(8), Idaho Code. ( )

**12. Original Certificate or Document.** Shall mean either the original document itself or a certified copy thereof issued by the agency or institution and mailed or delivered directly from the source to the Board or a Board approved credential verification service. ( )

**13. Rules.** The Rules of the Board of Naturopathic Medical Examiners, IDAPA 24.24.01, as amended from time to time. ( )

**011. -- 099. (RESERVED).**

### **100. SCOPE OF PRACTICE (RULE 100).**

**01. Scope of the Naturopathic Physician.** A naturopathic physician is authorized to provide only services and treatments for which that licensee has been appropriately trained and prepared by Board approved education, continuing education, and practical experience. Information contained within the application together with supporting documentation submitted by the licensee shall be prima facie evidence of the licensee's education and experience. It is the responsibility of the individual licensee to submit adequate documentation of education and experience appropriate to the services and treatments being provided to the public. Naturopathic medicine allows naturopathic physicians to provide all natural health care services as defined in Section 54-5102(8), Idaho Code. A naturopathic physician is authorized to examine, diagnose,

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treat, mitigate, and prevent all mental and physical illnesses, infirmities, injuries, ailments, diseases, and conditions or make appropriate referral. ( )

**02. Treatments.** The scope of practice as defined in Section 54-5104, Idaho Code, and includes dispensing, administering, ordering, prescribing, or performing the following: ( )

**a.** Oral food, extracts of food, nutraceuticals, phytonutrients, vitamins, amino acids, minerals, enzymes, botanicals, and their extracts, homeopathic medicines, herbal medicines, Ayurvedic medicines, all dietary supplements and non prescription drugs as defined by or recognized in the United States Pharmacopoeia-National Formulary (USP-NF), the Homeopathic Pharmacopoeia of the United States (HPUS), Facts & Comparisons, and the PDR (Physicians Desk Reference) for Herbal Medicines or any supplement to these documents. ( )

**b.** Prescription medications and devices as determined by the naturopathic medical formulary council and approved by the Board. ( )

**c.** Naturopathic physical medicine and modalities consistent with naturopathic medical training and education including, but not limited to, hydrotherapy, colon hydrotherapy, meridian therapy, electro-stimulation, sensitivity elimination therapy, micro-systems diagnosis and therapy, mechanotherapy, therapeutic touch, contact reflex analysis, environmental medicine, light therapy, color therapy, energy therapy, gem therapy, sound therapy, air therapy, heat therapy, bio-feedback, and therapeutic exercise. Devices including, but not limited to, therapeutic devices, barrier contraception, and durable medical equipment. ( )

**d.** Health promoting education and counseling. ( )

**e.** Repair and care incidental to superficial lacerations and abrasions, removal of foreign bodies located in the superficial tissues, as defined in Section 54-5102(3), Idaho Code. ( )

**101. -- 109. (RESERVED).**

### **110. SPECIAL COMPETENCY CERTIFICATION (RULE 110).**

Acquired Special Competency Certifications shall be shown on licenses issued to naturopathic medical doctors for the following areas: minor office procedures, intravenous therapy, and naturopathic obstetrics, and also displayed on the license certificate and annual renewal card. ( )

**01. Naturopathic Obstetrics Certification.** Naturopathic obstetrics certification requires proof of completion of an advanced life support in obstetrics (ALSO) course and documentation of training and experience equal to or greater than that required by IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." ( )

**02. Intravenous Therapy Certification.** Intravenous therapy certification requires proof of completion of appropriate coursework and number of hours to be determined by the Board. ( )

**03. Minor Office Procedures Certification.** Minor office procedures certification



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requires proof of completion of a preceptorship consisting of twenty-five (25) documented cases as approved by the Board. ( )

**111. -- 124. (RESERVED).**

### **125. QUALIFICATIONS FOR LICENSURE (RULE 125).**

**01. Qualifications for Licensure.** Applicants will meet the following requirements: ( )

**a.** Submit a complete application accompanied by all appropriate fees; ( )

**b.** Completion of a Board approved naturopathic medical program as defined in Section 54-5102 (1), Idaho Code; ( )

**c.** Pass an examination approved by the Board as defined in Sections 54-5109 (9) and 54-5112(2), Idaho Code; ( )

**d.** File a Board-approved disclosure form stating the degrees, training, experience, credentials and the health care services they are approved to provide by the Board; ( )

**e.** Sign an affidavit swearing under oath that they: ( )

**i.** Possess a good, ethical and professional reputation; ( )

**ii.** Are physically and mentally capable of safely practicing naturopathic medicine with or without reasonable accommodation; and, ( )

**iii.** Have never had a license to practice naturopathic medicine or other health care license, registration or certificate refused, revoked or suspended by any other state or country for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine, or other health care profession unless that license, registration or certification has been restored to good standing by that state or country. ( )

**iv.** Have disclosed any criminal charges, convictions, or guilty pleas against the applicant other than minor traffic offenses. ( )

**02. Residence.** No period of residence in Idaho shall be required of any applicant. ( )

**03. Character.** The Board may refuse licensure if it finds that the applicant has engaged in conduct prohibited by Section 54-5115, Idaho Code; provided that the Board, solely at its own discretion, may take into consideration the rehabilitation of the applicant and other mitigating circumstances. ( )

**04. Application - Form and Deadline.** ( )

**a.** All applicants shall complete an application for licensure upon a Board approved

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form, which shall include: ( )

i. References to include two (2) letters of recommendation signed by naturopathic physicians who have known the applicant professionally for at least one (1) year; ( )

ii. An unmounted photograph of the applicant, of adequate size and clarity to identify the applicant and no larger than four inches tall by three inches wide (4" x 3"), taken not more than one (1) year prior to the date of the application; ( )

iii. The employment history and relevant practice locations of the applicant; ( )

iv. Each state in which the applicant has applied for a license to practice naturopathic medicine; and ( )

v. Each state wherein the applicant is licensed to practice naturopathic medicine. ( )

**b.** No application shall be accepted or considered by the Board until it is complete and has been received by the Bureau at least thirty (30) days prior to the next scheduled Board meeting and all required fees have been paid. ( )

**c.** Incomplete applications on file with the Bureau for a period in excess of one (1) year from the date of initial receipt by the Bureau shall be deemed denied and terminated by the Board. ( )

#### **05. Official Transcripts.** ( )

**a.** All applicants shall arrange for official transcripts of all *education* credit earned to be transmitted *directly to the Board* by the registrars of the educational institutions. ( )

**b.** If official documentation is unobtainable or unavailable, the applicant shall submit a written explanation and provide any documentation the Board may request to assist the Board in considering the application for licensure. ( )

**06. Personal Interview.** Each applicant may be personally interviewed by the Board or a designated committee of the Board. The interview shall include a review of the applicant's qualifications and professional credentials. ( )

#### **126. -- 129. (RESERVED).**

#### **130. APPROVED PROGRAMS OF NATUROPATHIC MEDICINE (RULE 130).**

All applicants shall have attended an "Approved Naturopathic Medical Program" as that phrase is defined in Section 54-5102(1), Idaho Code, to mean a doctoral level program of supervised resident study in naturopathic medicine approved by the Board. ( )

**01. Naturopathic Medical Program.** Programs will meet the following minimum naturopathic medicine educational standards: ( )

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a. The *entity offering the naturopathic medical program* is or was *operating* under the laws of the state of its residence. Foreign country naturopathic medical programs must possess equivalent qualifications to those required of U.S. naturopathic medical programs. Approved schools of Naturopathic Medicine will be duly registered with the appropriate agency under their State Department or Board of Education in the state in which they exist and regulated by the rules of that Department or Board of Education in that state. Any individual or school entity offering an approved program of study in Naturopathic Medicine and operating in the state of Idaho must comply with provisions of Title 33, Chapter 24, Idaho Code, and register with the Idaho State Board of Education unless specifically exempt from the registration requirements of IDAPA 08.01.11.400.03.d., “Registration of Post-Secondary Educational Institutions and Proprietary Schools.” ( )

b. The naturopathic medical schools or programs objectives shall be clearly stated and should address the preparation of naturopathic physicians to provide patient care and for being licensed by state authorities. ( )

c. Educational standards shall include instruction in a core program of the basic and clinical sciences relating to naturopathy, naturopathic theory and practice, including naturopathic techniques and methods, and such other subjects as the Board may deem useful and shall require each student to demonstrate competence. ( )

d. The naturopathic medical program shall disclose to the Board, upon request, information regarding the academic merits of its curriculum, the professional competence of its faculty, record keeping methods, physical assets, financial status, makeup of the governing body, catalogue characteristics, nondiscrimination policy, and any self-evaluation system. ( )

**02. Revoke the Approval.** The Board may revoke the approval of a program if it fails to meet the requirements of its applicable approved accrediting body or the Board. ( )

**03. Registration Requirements.** *All approved programs must also meet the registration requirements of their relevant jurisdiction.* ( )

**131. -- 134. (RESERVED).**

### **135. APPROVED NATUROPATHIC EXAMINATION (RULE 135).**

All applicants must pass a Board-approved examination. ( )

**01. Section 54-5109(9), Idaho Code.** The Board shall have the authority to provide a uniform, independently proctored and psychometrically valid examination for use in licensing naturopathic physicians which will adequately test the applicant's knowledge of naturopathic medicine including the basic medical sciences and the diagnostic and therapeutic skill of license applicants. ( )

**02. Approved Examinations.** *The Board will provide or approve an independently proctored examination which will test the diagnostic and clinical competency of all applicants. All applicants, previously licensed or not, must have passed an approved competency examination.* ( )

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**03. Board Evaluation of Examinations.** The Board retains its authority to evaluate any examination entity for approval that meets the statute examination requirements as defined in Sections 54-5109(9) and 54-5112(2), Idaho Code, including competency based and is psychometrically valid and reliable. ( )

**04. Minimum Passing Score.** The minimum passing score for each section of any examination approved by the Board shall be that passing score determined by the examination entity. ( )

**136. -- 149. (RESERVED).**

**150. LICENSES (RULE 150).**

**01. Expiration Date.** All licenses issued pursuant to the Naturopathic Physicians Licensing Act, Title 54, Chapter 51, Idaho Code, and these Rules shall expire and must be renewed annually in accordance with Section 67-2614, Idaho Code. Licenses not timely renewed prior to expiration shall be cancelled. ( )

**02. Renewal.** Each license to practice naturopathic medicine may be renewed prior to its expiration date by the payment of a renewal fee to the Board and completion of a renewal form provided by the Board. In order to be eligible for renewal, a licensee must provide a current address to the Board and must notify the Board of any change of address prior to the renewal period. Licenses not renewed by their expiration date shall be canceled. The license will terminate on the date of the license holder's birthday in accordance with Section 67-2614, Idaho Code. ( )

**03. Reinstatement.** In accordance with Section 67-2614, Idaho Code, licenses canceled for nonpayment of renewal fees may be reinstated by filing a reinstatement application on forms prescribed by the Board and upon payment of a reinstatement fee. The applicant shall submit proof of having satisfied the required CE credits for the twelve-month (12) period preceding the reinstatement date. ( )

**04. Relicensure.** Persons, whose licenses have been canceled for a period of more than five (5) years, shall be required to make application to the Board as new applicants for licensure and comply with provisions of Section 67-2614, Idaho Code, for reinstatement. ( )

**151. -- 199. (RESERVED).**

**200. LICENSURE BY ENDORSEMENT (RULE 200).**

**01. Jurisdiction Other Than the State of Idaho.** All applicants licensed in a jurisdiction other than the state of Idaho and whose licensure requirements are equal to or greater than the licensure requirements for the state of Idaho may apply for licensure by endorsement. Endorsement applicants shall meet the following requirements: ( )

**a.** Submit a complete application accompanied by the appropriate fees. ( )

**b.** Cause to be submitted directly to the Board from the issuing authority an official

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certification of a current license in good standing. ( )

c. Sign an affidavit swearing under oath that they have: ( )

i. Fully reviewed and understand and will abide by both the Naturopathic Physicians Licensing Act, Title 54, Chapter 51, Idaho Code, and the Board's Rules, IDAPA 24.24.01, "Rules of the Board of Naturopathic Medical Examiners"; and, ( )

ii. Have never had a license to practice naturopathic medicine or other health care license, registration or certificate refused, revoked or suspended by any other state or country for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine, or other health care profession unless that license, registration or certification has been restored to good standing by that jurisdiction. ( )

d. The Board may refuse licensure if it finds that the applicant has engaged in conduct prohibited by Section 54-5115, Idaho Code; provided that the Board, solely at its own discretion, may take into consideration the rehabilitation of the applicant and other mitigating circumstances. ( )

**201. -- 249. (RESERVED).**

### **250. CONTINUING NATUROPATHIC EDUCATION (CNE) REQUIRED (RULE 250).**

**01. Purpose.** The purpose of practice relevant CNE is to enhance competence, performance, understanding of current standards of care, and patient outcomes. ( )

**02. Renewal.** Each person licensed to practice naturopathic medicine in Idaho shall complete no less than twenty (20) hours of relevant educational courses, workshops or other activities as approved by the Board, five (5) hours of which must be in pharmacology with specialization in naturopathic materials, medications, and remedies each year. Licensee may carry over up to twenty (20) hours of unused CNE's to the next renewal cycle. ( )

**03. Continuing Education.** Once an approved formulary, as determined by the naturopathic medical formulary council, has been adopted by rule, all licensed naturopathic physicians must take a Board-approved course reviewing any addition to the formulary. ( )

**04. Approved Programs.** All education offered by regionally accredited institutions or organizations, or sponsored by a federally accredited naturopathic medical program, or as approved by the Board. ( )

**05. Distance Learning and Home Study.** Courses of distance learning and home study that do not include the actual physical attendance of the applicant in a face-to-face setting with a course instructor may be approved by the Board for continuing education credit. Such courses shall not be eligible for more than fifty percent (50%) of the required continuing education credits. ( )

**06. Verification of Compliance.** Licensees shall, at license renewal, provide a signed statement to the Board indicating compliance. The Board, in its discretion, may require such

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additional evidence as is necessary to verify compliance. ( )

**07. Penalties for Noncompliance.** The Board may condition, limit, suspend, or refuse to renew the license of any person whom the Board determines has failed to comply with the continuing education requirements of these rules. ( )

**251. -- 299. (RESERVED).**

**300. FEES (RULE 300).**

**01. Licensure Fee.** Licensure Fee -- Two hundred fifty dollars (\$250). ( )

**02. Application Fee.** Application Fee -- Two hundred fifty dollars (\$250). ( )

**03. Reinstatement License Fee.** Reinstatement License Fee -- one hundred dollars (\$100) plus total of renewal fees not paid by applicant. ( )

**04. Annual Renewal Fee.** Annual Renewal Fee -- Two hundred fifty dollars (\$250). ( )

**05. Non-Refundable.** All fees are non-refundable. ( )

**301. -- 349. (RESERVED).**

**350. ADDITIONAL GROUNDS FOR SUSPENSION, REVOCATION OR DISCIPLINARY ACTIONS AND SANCTIONS. (RULE 350).**

In addition to the statutory grounds for naturopathic medical discipline set forth in Section 54-5115, Idaho Code, every person licensed to practice naturopathic medicine is subject to discipline by the Board upon any of the following grounds: ( )

**01. Crimes.** If an applicant is guilty or convicted of any item listed in Section 54-5115(5), Idaho Code, and reparation is made by said applicant and the debt is paid to society by said applicant, then the Board may, at the Board's discretion, consider the issuance and/or renewal of a naturopathic medicine license to said applicant. ( )

**02. Unethical Advertising.** Advertising the practice of naturopathic medicine in any unethical or unprofessional manner, includes, but is not limited to: ( )

**a.** Using advertising or representations likely to deceive, defraud, or harm the public. ( )

**b.** Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the naturopathic medicine, treatment, or remedy prescribed by the licensee at the licensee's direction in the treatment of any disease or other condition of the body or mind. ( )

**03. Failure to Meet Standard of Care.** The providing of health care which fails to meet the standard of health care provided by other qualified naturopathic physicians in the same

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community or similar communities, includes, but is not limited to: ( )

a. Being found mentally incompetent or insane by any court of competent jurisdiction. ( )

b. Engaging in practice or behavior that demonstrates or manifests an incapacity or incompetence to practice naturopathic medicine. ( )

c. Allowing another person or organization to use the licensee's license to practice *naturopathic* medicine. ( )

d. Prescribing, selling, administering, distributing, or giving to himself, herself, to a spouse, child, or stepchild any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug. ( )

e. Violating any state or federal law or regulation relating to controlled substances. ( )

f. Directly promoting minor office procedures or laboratory tests that are unnecessary and contraindicated by current standards of naturopathic practice. ( )

g. Failure to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by the subject patient's legally designated representative or guardian. ( )

h. Failing to maintain adequate records. Adequate patient records means legible records that contain, at a minimum, subjective information, an evaluation and report of objective findings, assessment, or diagnosis, and the plan of care. ( )

**04. Conduct.** Engaging in any conduct that constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient, including, but not limited to: ( )

a. Obtaining any fee by fraud, deceit, or misrepresentation. ( )

b. Employing abusive billing practices. ( )

c. Commission of any act of sexual contact, misconduct, exploitation, or intercourse with a patient or former patient where such act arises out of the licensee's practice of naturopathic medicine. ( )

i. Consent of the patient, whether expressed or implied, shall not be a defense. ( )

ii. Subsection 350.05 of this rule does not apply to sexual contact between a naturopathic medical care provider and the provider's spouse or a person in a domestic relationship *with the provider* who is also a patient. ( )

d. Interfering with an investigation or disciplinary proceeding by willful

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misrepresentation of facts or by use of threats or harassment against any patient, board or committee on professional discipline member, Board staff, hearing officer, or witness in an attempt to influence the outcome of a disciplinary proceeding, investigation, or other legal action.

( )

**05. Civil Fine.** The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed naturopathic physician for each violation of Section 54-5115, Idaho Code.

( )

**06. Costs and Fees.** The Board may order a licensed naturopathic physician to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee if found in violation of Section 54-5115, Idaho Code.

( )

**351. -- 999. (RESERVED).**



## **HEALTH AND WELFARE COMMITTEE**

### **IDAPA 41 - PUBLIC HEALTH DISTRICTS**

#### **41.04.01 - PUBLIC HEALTH DISTRICT 4 - COSTS AND CHARGES**

##### **DOCKET NO. 41-0401-0701 (CHAPTER REPEAL) (FEE RULE)**

##### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-416(1), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**There are no changes in the pending rule. Subsequently, the pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007, Idaho Administrative Bulletin, Vol. 07-10, page 433.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 39-414(11), Idaho Code:

**This rule was made effective July 1, 1993, and applied only to Public Health District 4. The rule specifies fees for services delivered by the agency, except for those specified elsewhere in Idaho Code. On January 26, 1994, a set of rules were adopted that apply to fee setting for all seven Public Health Districts. At that point, the 1993 rules became obsolete. This request is to repeal the 1993 rules for housekeeping purposes.**

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Russell A. Duke at 327-8501.

DATED this 29th day of October, 2007.

Russell A. Duke, Director  
Central District Health Department  
707 N. Armstrong Pl., Boise, Idaho 83704-0825  
Ph: 327-8501, Fax: 327-8500

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**PUBLIC HEALTH DISTRICTS**  
**Public Health District 4 - Costs and Charges**

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### ***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-416(1), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule was made effective July 1, 1993 and applied only to Public Health District 4. The rule specifies fees for services delivered by the agency, except for those specified elsewhere in Idaho Code. On January 26, 1994 a set of rules were adopted that apply to fee setting for all 7 Public Health Districts. At that point, the 1993 rules became obsolete. This rulemaking is to repeal the 1993 rules for housekeeping purposes.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the nature of the rulemaking is to repeal the chapter.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Russell A. Duke at 327-8501.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 20th day of August, 2007.

***IDAPA 41.04.01 IS BEING REPEALED IN ITS ENTIRETY.***